

NOTICE TO BIDDERS

IMPORTANT ********IMPORTANT********IMPORTANT

THE STATEWIDE IT PROCUREMENT OFFICE HAS MOVED

NEW ADDRESS: 3900 Wake Forest Road RALEIGH, NC 27609 +(P.O. Box remains 17209)

DIRECTIONS FROM 3512 Bush Street:

- 1: Start out by turning RIGHT from the parking lot onto BUSH STREET.
- 2: Turn LEFT onto ST ALBANS DR.
- 3: Turn RIGHT at intersection of ST ALBANS DR and WAKE FOREST ROAD.
- 4: Proceed to 3900 WAKE FOREST ROAD on the RIGHT-HAND side of the street.

TOTAL ESTIMATED TIME: 2 minutes TOTAL DISTANCE: 0.8 miles

3900 is a beige building.

THIS BID MUST BE DELIVERED TO OUR NEW LOCATION BY November 4, 2005 @ 2:00 PM

IMPORTANT ********IMPORTANT********IMPORTANT

ITS Bid No.: ITS-002724	Bidder:	

STATE OF NORTH CAROLINA	REQUEST FOR PROPOSAL NO. ITS-002724	
OFFICE OF INFORMATION TECHNOLOGY SERVICES	Bids will be publicly opened: November 4, 2005	
Division of Statewide IT Procurement	Contract Type: Statewide Term Contract	
Refer <u>ALL</u> Inquiries to: Ed Daughtry Telephone No. 919-754-6671	Date Issued: October 11, 2005 Commodity Number: 220 Commodity: Voting Machines	
E-Mail: ed.daughtry@ncmail.net	Using Agency Name: State Board of Elections and county governments	
(See page 2 for delivery instructions.)	Agency Requisition No.	

OFFER AND ACCEPTANCE: This solicitation advertises the State's needs for the services and/or goods described herein. The State seeks proposals comprising competitive bids offering to sell the services and/or goods described in this solicitation. All proposals and responses received shall be treated as offers to contract. The State's acceptance of any proposal must be demonstrated by execution of the acceptance found below, and any subsequent Request for Best and Final Offer, if issued. Acceptance shall create a contract having an order of precedence among terms as follows: Special terms and conditions specific to this RFP, Specifications of the solicitation documents, except as amended, the State's General Terms and Conditions for Goods and Related Services, as may be amended by the Supplemental Terms annexed hereto, if any, Best and Final Offers, if any and the awarded vendor's proposal.

EXECUTION: In compliance with this Request for Proposal, and subject to all the conditions herein, the undersigned offers and agrees to furnish any or all services or goods upon which prices are bid, at the price(s) offered herein, within the time specified herein. By executing this bid, I certify that this bid is submitted competitively and without collusion.

Failure to execute/sign bid prior to submittal shall render bid invalid.

VENDOR:		FEDERAL ID OR SOCIAL SECURITY NO.	
STREET ADDRESS:		P.O. BOX:	ZIP:
CITY & STATE & ZIP:		TELEPHONE NUMBER:	TOLL FREE TEL. NO
TYPE OR PRINT NAME & TITLE OF PERSON SIGNING:		FAX NUMBER:	
AUTHORIZED SIGNATURE:	DATE:	E-MAIL:	

Offer valid for ninety -(90) days from date of bid opening unless otherwise stated here: _____ days

<u>ACCEPTANCE OF BID</u>: If any or all parts of this bid are accepted, an authorized representative of Information Technology Services shall affix their signature hereto and this document. A copy of this acceptance will be forwarded to the successful vendor(s).

FOR INFORMATION TECHNOLOGY SERVICES USE ONLY				
Offer accepted and contract awarded this	day of	, 20, as indicated on attached certification,		
by		(Authorized representative of Information Technology Services).		

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ITS Bid No.: ITS-002724	Bidder:
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ISSUING AGENCY: Office of Information Technology Services

P.O. Box 17209

Raleigh, North Carolina

USING AGENCY: State Board of Elections

506 North Harrington St. Raleigh, North Carolina

DELIVERY INSTRUCTIONS: Deliver **two** (2) **signed originals and two** (2) **copies** of the Proposal to Issuing

Agency in a sealed package with Company Name and RFP Number clearly marked on the front.

DELIVERED BY US POSTAL SERVICE	DELIVERED BY ANY OTHER MEANS
BID NO.: ITS-002724	BID NO.: ITS-002724
Statewide IT Procurement Office	Statewide IT Procurement Office
Attn: Ed Daughtry	Attn: Ed Daughtry
PO Box 17209	3900 Wake Forest Road
Raleigh, NC 27619-7209	Raleigh, NC 27609

Sealed bids, subject to the conditions made a part hereof, will be received at 3900 Wake Forest Road until 2:00 PM on the day of opening and then opened, for furnishing and delivering the commodity as described herein. Proposals for this RFP must be submitted in a sealed package with the Execution of Proposal signed and dated by an official authorized to bind the vendor's firm. Failure to return a signed execution of proposal shall result in disqualification. All proposals must comply with Section V, Proposal Content and Organization.

Proposals will not be accepted by electronic means. This RFP is available electronically at:

http://www.ips.state.nc.us/ips/pubmain.asp.

All inquiries regarding the RFP requirements are to be addressed to the contact person listed on Page One.

Questions: Written questions concerning the RFP specifications will be received until October 21, 2005 at 2:00 PM ET. They must be sent via e-mail to: ed.daughtry@ncmail.net. Please insert "ITS002724 Questions" in the subject matter of your e-mail. A summary of all questions and answers will be posted to the Interactive Purchasing System (IPS) as an addendum to this RFP.

Mandatory Pre-Bid Conference: There will be a mandatory Pre-Bid Conference held on October 18, 2005 at 1:00 PM ET at 506 North Harrington Street, Raleigh, NC. Vendors wishing to submit a bid must attend this conference. Proposals will only be considered from vendors that attend this mandatory conference.

Addendum to RFP: If a pre-bid conference is held or written questions are received prior to the submission date, an addendum comprising questions submitted and responses to such questions, or any additional terms deemed necessary by the State will be posted to the Interactive Purchasing System (IPS), http://www.ips.state.nc.us/ips/deptbids.asp, and shall become an Addendum to this RFP. Vendors' questions posed orally at any pre-bid conference must be reduced to writing by the vendor and provided to the Purchasing Officer as directed by said Officer.

Critical updated information may be included in these Addenda. It is important that all vendors bidding on this proposal periodically check the State website for any and all Addenda that may be issued prior to the bid opening date.

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Basis for Rejection. Pursuant to 9 NCAC 06B.0401, the State reserves the right to reject any and all offers, in whole or in part; by deeming the offer unsatisfactory as to quality or quantity, delivery, price or service offered; non-compliance with the requirements or intent of this solicitation; lack of competitiveness; error(s) in specifications or indications that revision would be advantageous to the State; cancellation or other changes in the intended project, or other determination that the proposed requirement is no longer needed; limitation or lack of available funds; circumstances that prevent determination of the best offer; or any other determination that rejection would be in the best interest of the State.

NOTICE TO VENDORS: The State objects to and will not be required to evaluate or consider any additional terms and conditions submitted with a vendor response. This applies to any language appearing in or attached to the document as part of the vendor's response. By execution and delivery of this Request for Proposal and response(s), the vendor agrees that any additional terms and conditions, whether submitted purposely or inadvertently, shall have no force.

Late Proposals. Regardless of cause, late proposals will not be accepted and will automatically be disqualified from further consideration. It shall be the vendor's sole risk to ensure delivery at the designated office by the designated time. Late proposals will not be opened and may be returned to the vendor at the expense of the vendor or destroyed if requested.

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Section I: Introduction

The purpose of this Request For Proposal (RFP) and any resulting contract award is to solicit proposals through the North Carolina State Board of Elections to procure the services of vendor(s) capable of supplying the State of North Carolina counties with one or more types of direct recording electronic (DRE); direct recording electronic (DRE) or optical scan marking systems with audio interface for non-visual access; precinct count optical scan voting equipment; optical scan voting equipment for absentee; and, provisional balloting and alternate technology (not defined as DRE or optical scan).

This is a RFP for a Statewide Term Contract where it is intended that counties shall be the entities making actual purchases through a contract resulting from this RFP. Provisions as to rights, duties, and benefits in this RFP, where applicable to a vendor purchaser relationship, shall apply equally to a county purchaser as to the State. A good faith attempt has been made to incorporate this intent in this RFP, however, vendors are notified that even in the absence of specific wording, it is the intent of the State that appropriate rights, duties, and benefits mandated in this RFP shall incur to the benefit of counties by virtue of any contract entered into by a vendor, the State, or county as a result of this RFP. Any direct contract between a vendor and a county may incorporate by reference this RFP or a contract entered into by the State or vendor as a result of this RFP.

The State Board of Elections is seeking a statewide fixed price for certified voting equipment for a One (1) year contract with the State retaining the option to extend the contract for two (2) additional one (1) year periods at its sole discretion.

It is the intent of the State Board of Elections to decertify all existing voting systems in North Carolina effective January 1, 2006, subject to any qualified systems being recertified. This RFP provides a process for certifying voting systems of selected vendors during the RFP evaluation process, and only voting systems that have been certified by the State Board of Elections and that have not been subsequently decertified shall be permitted for use in elections in this State.

Instrumental in the undertaking of this activity was the passage of the Help America Vote Act of 2002 (HAVA) by Congress. HAVA provides voting system requirements as well as a large portion of the funding necessary for voting system upgrades. Grants from the HAVA Election Fund may be used by the County Boards of Election for purchasing voting equipment from a vendor or vendors awarded a contract from this RFP. The voting system implemented shall comply with Title III of HAVA (Elections - HAVA Title III Requirements) as well as North Carolina election statutes (http://www.sboe.state.nc.us/pdf/NCGAJul_14_2005_Update.pdf).

Voting systems and services must provide certified, easy to use, cost-effective, direct recording electronic (DRE) or precinct count optical scan voting systems at the polling places and optical scan voting systems for absentee balloting for use by the citizens of North Carolina for any Federal, State or Local election conducted within the term of the contract that results from this RFP.

The State Board of Elections estimates the cost of this contract to be at least \$42,000,000.00, depending on the type of and quantity of equipment purchased by the counties. The State of North Carolina has 100 counties, 2,754 precincts and 5,520,000 registered voters.

This solicitation will result in a Term Contract pursuant to 9 NCAC 06B.0701(1) to consolidate the normal anticipated requirements of county governments. This contract shall be, and operate as, a multiple vendor contract with vendors that have submitted voting systems which have been certified by the State Board of Elections during this RFP process being awarded the contract. The contract shall be a MANDATORY Statewide TERM Contract for the use of state or county governments.

The State Board of Elections intends to purchase a limited amount of voting equipment from this contract to setup a training and testing facility at the office of the State Board of Elections in Raleigh, NC.

The State does not, and will not, guarantee purchase quantities to be made under this contract.

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Section II: Bidding Information

A. Instructions to Vendors

Additional acronyms, definitions and abbreviations may be included in the text of the RFP.

- 1) Proposals submitted electronically, or via facsimile (FAX) machine will not be accepted.
- 2) EXECUTION: Failure to sign under EXECUTION section will render proposal invalid.
- 3) <u>TIME FOR CONSIDERATION</u>: Unless otherwise indicated on the first page of this document, vendor's offer must be valid for 90 days from the date of proposal opening
- 4) <u>FAILURE TO MEET PROPOSAL</u> REQUIREMENTS: While it is not anticipated that the awarded vendor(s) will fail to meet the proposal requirements, if such should occur, the right is reserved to further evaluate the responses to this RFP and then to recommend an award to the next vendor response that represents the best interest of the State.
- 5) <u>PROMPT PAYMENT DISCOUNTS</u>: Vendors are urged to compute all discounts into the price offered. If a prompt payment discount is offered, it will not be considered in the award of the contract except as a factor to aid in resolving cases of identical prices.
- 6) <u>MISCELLANEOUS:</u> Masculine pronouns shall be read to include feminine pronouns, and the singular of any word or phrase shall be read to include the plural and vice versa.
- 7) <u>VENDOR REGISTRATION AND SOLICITATION NOTIFICATION SYSTEM:</u> Vendor Link NC allows vendors to electronically register with the State to receive electronic notification of current procurement opportunities for goods and services available on the Interactive Purchasing System. Online registration and other purchasing information are available through our Internet web site:
 - http://www.its.state.nc.us/ITProcurement/
- 8) <u>ORGANIZATION:</u> Vendors are directed to carefully review Section V herein and fully comply with the content and organizational requirements therein.
- 9) <u>E-PROCUREMENT:</u> Ten percent (currently 9 of 100) of the counties that will purchase from this contract may issue purchase orders using the NC @ Your Service E-Procurement System. See paragraph #42 of the attached Information Technology Procurement Office General Terms and Conditions for Goods and Related Services for information relevant to e-procurement. The Terms and Conditions made part of this solicitation contain language necessary for the implementation of North Carolina's statewide e-procurement initiative. It is the vendor responsibility to read these terms and conditions carefully and to consider them in preparing the offer. By signature, vendor acknowledges acceptance of all terms and conditions including those related to e-procurement. General information on the e-procurement service can be found at:

http://www.ncgov.com/eprocurement/asp/section/ep_index.asp

B. General Conditions for Proposals

<u>Definitions</u>, <u>Acronyms</u>, <u>and Abbreviations</u>. Generally, see 9 NCAC 06A.0102 for definitions. The following are additional defined terms:

- a) The State: Is the State of North Carolina, and its Agencies.
- b) **County:** Any North Carolina county who purchases products through a contract resulting from this RFP, or incorporates this RFP or the resulting contract from this RFP into a separate contract with a vendor.
- c) **ITS:** Office of Information Technology Services.

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d) **Goods**: Includes intangibles such as computer software; provided, however that this definition does not modify the definition of "goods" in the context of N.C.G.S. §25-2-105 (UCC definition of goods).

- b) **Vendor:** Company, firm, corporation, partnership, individual, etc., submitting a response to a solicitation
- c) **Open Market Contract:** A contract for the purchase of goods or services not covered by a term, technical, or convenience contract.
- d) **24x7:** A statement of availability of systems, communications, and/or supporting resources every hour (24) of each day (7 days weekly) throughout every year for periods specified herein. Where reasonable downtime is accepted, it will be stated herein. Otherwise, 24x7 implies NO loss of availability of systems, communications, and/or supporting resources.
- e) **Reasonable, Necessary, or Proper**: as used herein shall be interpreted solely by the State of North Carolina.
- f) **RFP:** Request for Proposal
- g) **EAC:** Election Assistance Commission
- h) NASED: National Association of Special Equipment Distributors
- 2) Read and Review. It shall be the vendor's responsibility to read this entire document, review all enclosures and attachments, and comply with all requirements and the State's intent as specified herein. If a vendor discovers an inconsistency, error or omission in this solicitation, the vendor should request a clarification from the State's contact person listed on the front page of the solicitation. Questions and clarifications must be submitted in writing and may be submitted by personal delivery, letter, fax or e-mail within the time period identified hereinabove.
- 3) Vendor Responsibility. The vendor(s) will be responsible for investigating and recommending the most effective and efficient technical configuration. Consideration shall be given to the stability of the proposed configuration and the future direction of technology, confirming to the best of their ability that the recommended approach is not short lived. Several approaches may exist for hardware configurations, other products and any software. The vendor(s) must provide a justification for their proposed hardware, product and software solution(s) along with costs therefor. Vendors are encouraged to present explanations of benefits and merits of their proposed solutions together with any accompanying services, maintenance, warranties, value added services or other criteria identified herein.
- 4) Oral Explanations. The State will not be bound by oral explanations or instructions given at any time during the bidding process or after award. Vendor contact regarding this RFP with anyone other than the Agency contact or procurement officer named on Page 2 above may be grounds for rejection of said vendor's offer. Agency contact regarding this RFP with any vendor may be grounds for cancellation of this RFP.
- 5) <u>Insufficiency of References to Other Data</u>. Only information that is received in response to this RFP will be evaluated. Reference to information previously submitted will not suffice as a response to this solicitation.
- 6) <u>Conflict of Interest</u>. Applicable standards may include: N.C.G.S. §§ 147-33.100, 14-234, 133-32. The vendor shall not knowingly employ, during the period of this contract, nor in the preparation of any response to this solicitation, any personnel who are, or have been, employed by a vendor also in the employ of the State and who are providing services involving, or similar to, the scope and nature of this solicitation or the resulting contract.
- 7) Contract Term. A contract awarded pursuant to this RFP shall have an effective date as provided in the Notice of Award. The term shall be One (1) year, and will expire upon the anniversary date of the effective date unless otherwise stated in the Notice of Award, or unless terminated earlier. The State retains the option to extend this contract for two (2) additional one (1) year periods at its sole discretion.

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- 8) Effective Date. This solicitation, including any Exhibits, or any resulting contract or amendment shall not become effective nor bind the State until the appropriate State purchasing authority/official or Agency official has signed the document(s), contract or amendment; the effective award date has been completed on the document(s), by the State purchasing official, and that date has arrived or passed. The State shall not be responsible for reimbursing vendor for goods provided nor services rendered prior to the appropriate signatures and the arrival of the effective date of the Contract. No contract shall be binding on the State until an encumbrance of funds has been made for payment of the sums due under the contract.
- 9) Recycling and Source Reduction. It is the policy of this State to encourage and promote the purchase of products with recycled content to the extent economically practicable, and to purchase items which are reusable, refillable, repairable, more durable, and less toxic to the extent that the purchase or use is practicable and cost-effective. We also encourage and promote using minimal packaging and the use of recycled/recyclable products in the packaging of goods purchased. However, no sacrifice in quality of packaging will be acceptable. The vendor remains responsible for providing packaging that will protect the commodity and contain it for its intended use. Vendors are strongly urged to bring to the attention of the purchasers at the Statewide IT Procurement Office those products or packaging they offer which have recycled content and that are recyclable.
- 10) <u>Historically Underutilized Businesses</u>. Pursuant to General Statute 143-48 and Executive Order #150, the State invites and encourages participation in this procurement process by businesses owned by minorities, women, disabled, disabled business enterprises and non-profit work centers for the blind and severely disabled. Additional information may be found at: http://www.doa.state.nc.us/doa/hub/
- 11) <u>Clarifications/Interpretations</u>. Any and all amendments or revisions to this document shall be made by written addendum from the IT Procurement Office. Vendors may call the purchasing agent listed on the first page of this document to obtain a verbal status of contract award. If either a unit price or extended price is obviously in error, and the other is obviously correct, the incorrect price will be disregarded.
- 12) <u>Rights Reserved</u>. While the State has every intention to award a contract as a result of this RFP, issuance of the RFP in no way constitutes a commitment by the State of North Carolina, or the procuring Agency, to award a contract. Upon determining that any of the following would be in its best interests, the State may:
 - a) waive any formality;
 - b) amend the solicitation;
 - c) cancel or terminate this RFP;
 - d) reject any or all proposals received in response to this document;
 - e) waive any undesirable, inconsequential, or inconsistent provisions of this document, which would not have significant impact on any proposal;
 - f) if the response to this solicitation demonstrate a lack of competition, negotiate directly with one or more vendors;
 - g) not award, or if awarded, terminate any contract if the State determines adequate State funds are not available; or
 - h) if all responses are deficient, determine whether Wavier of Competition criteria may be satisfied, and if so, negotiate with one or more vendors.
- 13) Alternate Bids. Vendor may submit alternate bids for various levels of service(s) or products meeting specifications. Alternate bids must specifically identify the RFP requirements and advantage(s) addressed by the alternate bid. Any alternate proposals must be clearly marked with the legend as shown herein. Each proposal must be for a specific set of services or products and bid at specific pricing. If a vendor chooses to respond with various service or product offerings, each must be bid with a different price and a separate proposal response. Vendors may also provide multiple proposals for software or systems coupled with support and maintenance options, provided, however, all proposals must satisfy the specifications.

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Alternate bids must be clearly marked

"Alternate bid for 'name of Vendor"

and numbered sequentially with the first bid if separate proposals are submitted.

This legend must be in bold type of not less than 14-point type on the face of the bid, and on the text of the alternative proposal.

- 14) <u>Co-Vendors</u>. Vendors may submit offers as partnerships or other business entities. Such partners or other "co-Vendors", if any, shall disclose their relationship fully to the State. The State shall not be obligated to contract with more than one vendor. Any requirements for references, financial statements or similar reference materials shall mean **all** such partners or co-Vendors.
- 15) Submitting a Proposal. Each vendor submitting a proposal warrants and represents that:
 - a) The proposal is based upon an understanding of the specifications and requirements described in this RFP.
 - b) Costs for developing and delivering responses to this RFP and any subsequent presentations of the proposal as requested by the State are entirely the responsibility of the vendor. The State is not liable for any expense incurred by the vendors in the preparation and presentation of their proposals.
- 16) All materials submitted in response to this RFP become the property of the State and are to be appended to any formal documentation, which would further define or expand any contractual relationship between the State and vendor resulting from this RFP process.
- 17) A proposal may not be unilaterally modified by the vendor for 90-day period following the delivery of the proposal, or of any best and final offer.
- 18) ITS has implemented links to the Interactive Purchasing System (IPS) that allow the public to retrieve proposal award information electronically from our Internet web site: http://www.ips.state.nc.us/ips/pubmain.asp. Click on the IPS BIDS icon, click on Search for BID, enter the Agency prefix-proposal number (ITS-002724), and then search. This information may not be available for several weeks dependant upon the complexity of the acquisition and the length of time to complete the evaluation process.
- 19) Protest Procedures: Protests of awards exceeding \$25,000 in value must be submitted to the issuing Agency at the address given on the first page of this document. Protest must be received in this office with in 15 calendar days from the date of the contract award and provide specific reasons and any supporting documentation for the protest. All protests will be governed by Title 9, Office of Information Technology Services, Subchapter 06B Sections .1009 .1029.

C. Evaluation Process

1) "Best Value" procurement means the selection of a vendor by determining which proposal offers the best trade-off between price and performance, where quality is considered an integral performance factor. The award decision is made based on multiple factors, including: total cost of ownership, meaning the cost of acquiring, operating, maintaining, and supporting a product or service over its projected lifetime; the evaluated technical merit of the vendor's proposal; the vendor's past performance; and the evaluated probability of performing the requirements stated in the solicitation on time, with high quality, and in a manner that accomplishes the stated business objectives and maintains industry standards compliance. The intent of "Best Value" Information Technology procurement is to enable vendors to offer and the Agency to select the most appropriate solution to meet the business objectives defined in the solicitation and to keep all parties focused on the desired outcome of a procurement.

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- 2) <u>Source selection</u>. A tradeoff/ranking method of source selection will be utilized in this procurement to allow the State to award the contract to the vendor(s) providing the Best Value, and recognizing that Best Value may result in award other than the lowest price or highest technically qualified offer. By using this method, the overall ranking may be adjusted up or down when considered with, or traded-off against other non-price factors.
 - a) The evaluation methodology shall be consistent with 9 NCAC 06B.0302, or the corresponding section of any future NC Administrative Code, and this Section.
 - b) The evaluation committee may request clarifications, an interview with or presentation from any or all vendors as allowed by 9 NCAC 06B.0307. However, the State may refuse to accept, in full or partially, the response to a clarification request given by any vendor. Vendors are cautioned that the evaluators are not required to request clarifications; therefore, all offers should be complete and reflect the most favorable terms. Vendors should be prepared to send qualified personnel to Raleigh, North Carolina, to discuss technical and contractual aspects of the proposal.
- 3) Best and Final Offers (BAFO). If negotiations or subsequent offers are solicited, the vendors shall provide BAFOs in response. Failure to deliver a BAFO when requested shall disqualify the non-responsive vendor from further consideration. The State may establish a competitive range based upon evaluations of proposals, and request BAFOs from the vendors within this range; e.g. "Finalist Vendors". The State will evaluate BAFOs and add any additional points to the vendors' respective scores. Points awarded from oral presentations and product demonstrations during negotiations, if any, will be added to the previously assigned points to attain final scores.
- 4) The State will follow the process below when evaluating proposals submitted in response to this RFP:
 - a) A one-step process shall be used. Vendors shall submit Offers combining technical and price information together.
 - b) Evaluation Process Explanation. Certification and Evaluation Committee members will evaluate all proposals. All proposals will be initially classified as being responsive or non-responsive. If a proposal is found non-responsive, it will not be considered further. All responsive proposals will be evaluated based on stated evaluation criteria. Any references in an answer to another location in the RFP materials or Proposal shall have specific page numbers and sections stated in the reference.
 - c) To be eligible for consideration, a vendor <u>must</u> meet the intent of all mandatory requirements. Compliance with the intent of all requirements will be determined by the State. Responses that do not meet the full intent of all requirements listed in this RFP may be subject to point reductions during the evaluation process or may be deemed non-responsive. Further, a serious deficiency in the response to any one factor may be grounds for rejection regardless of overall score.
 - d) Vendors are advised that ITS is not obligated to ask for, or accept after the closing date for receipt of proposal, data that is essential for a complete and thorough evaluation of the proposal.
- 5) Evaluation Criteria: The State will invite vendors in compliance with the Mandatory Proposal Requirements to make a presentation of their products to the Evaluation Committee and Certification Committee for the purpose of State Certification and additional evaluation. Vendor qualifications substantially impact the evaluation process, and will be evaluated for the following:
 - a) Demonstration of compliance with the Mandatory Proposal Requirements
 - b) Unit Cost
 - c) Yearly Maintenance Costs
 - d) The quality and cost of vendor support
 - e) Financial history and stability of the vendor
 - f) Vendor experiences
 - g) The ease of use by voters, including voters with disabilities
 - h) The ease of use by election judges
 - i) The ease of use by county election staff
 - j) System Documentation
 - k) Training Program

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6) Evaluation Criteria Weight:

Evaluation Factors (Mandatory requirements, a , must be met in order to be evaluated in b thru j. See Section IV for requirements)	Relative Weight
Total Cost of Ownership (b, c, and d)	50%
Financial history and stability of the vendor (e)	15%
Vendor qualifications and experience (f)	10%
Ease of use by voters, voter $w/$ disabilities, election judges & election staff $(g,h,\text{and}I)$	15%
System Documentation (j)	5%
Training Program	5%
Total Weight	100%

- 7) Vendor may be disqualified from any evaluation or award if vendor, or any key personnel proposed, has previously failed to perform satisfactorily during the performance of any contract with the State, or violated rules or statutes applicable to public bidding in the State.
- 8) The Procurement Manager will make every effort to adhere to the following schedule:

Action	Responsibility	Date
Issue of RFP	State Purchasing Agent	10/11/05
Pre-Proposal Conference; receive questions from vendors	State Board of Elections	10/18/05 @ 1:00 PM ET
Deadline To Submit Additional Questions	Potential Vendors	10/21/05
Response to Written Questions/RFP Amendments	State Purchasing Agent	10/26/05
Submission of Proposal	Potential Vendors	11/4/05 @ 2 PM ET
Oral Presentation and Product Demonstrations by Finalists	Potential Vendors	11/16/05 thru 11/18/05
Contract Award	State Purchasing Agent	12/1/05
Protest Deadline	Vendors	12/22/05

9) Award of Contract. Qualified proposals will be evaluated and acceptance may be made in accordance with Best Value procurement practices as defined by GS §143-135.9 and applicable administrative rules. The responsible vendor whose proposal is most advantageous to the State, taking into consideration the evaluation factors herein, will be recommended for contract award. Unless otherwise specified by the State or the vendor, the State reserves the right to accept any item or group of items on a multi-item proposal.

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- 10) ITS has implemented links to the Interactive Purchasing System (IPS) that allow the public to retrieve proposal award information electronically from our Internet web site: http://www.ips.state.nc.us/ips/pubmain.asp. Click on the IPS BIDS icon, click on Search for BID, enter the Agency prefix-proposal number (ITS-002724), and then search. This information may not be available for several weeks dependant upon the complexity of the acquisition and the length of time to complete the evaluation process.
- 11) <u>Protest Procedures</u>: Protests of awards exceeding \$25,000 in value must be submitted to the issuing Agency at the address given on the first page of this document. Protests must be received in this office within 15 calendar days from the date of the contract award and provide specific reasons and any supporting documentation for the protest. All protests will be governed by Title 9, Office of Information Technology Services, Subchapter 06B Sections .1009 .1029.

Section III: Technical Specifications

- 1) Architecture. The North Carolina Statewide Technical Architecture is located at the following website: (http://www.ncsta.gov/). This provides a series of domain documents describing objectives, principles and best practices for the development, implementation, and integration of business systems. Agencies and vendors should refer to these Architecture documents when implementing enterprise applications and/or infrastructure.
- 2) Equivalent Items. Whenever a material, article or piece of equipment is identified in the specification(s) by reference to a manufacturer's or vendor's name, trade name, catalog number or similar identifier, it is intended to establish a standard, unless otherwise specifically stated as a brand specific requirement (no substitute items will be allowed). Any material, article or piece of equipment of other manufacturers or vendors shall perform to the standard of the item named. Equivalent bids must be accompanied by sufficient descriptive literature and/or specifications to provide for detailed comparison. Samples of items, if required, shall be furnished at no expense to the State and if not destroyed in the evaluation process, may be returned to the vendor at the vendor's expense.
- 3) All bids shall include specifications and technical literature sufficient to allow the State to determine that the equipment meets all requirements. This technical literature will be the primary source for bid evaluation. If a requirement is not addressed in the technical literature it must be supported by additional documentation and included with the bid. Bid responses without sufficient technical documentation may be rejected.
- 4) The State may, in its sole discretion, investigate any substitute or equivalent goods irrespective of any representation made by a vendor or manufacturer.
- 5) Specifications: Any deviation from specifications indicated herein must be clearly identified as an exception and listed on a separate page labeled "Exceptions to Specification"; otherwise, it will be considered that items offered are in strict compliance with these specifications, and vendor will be held responsible. Any deviations shall be explained in detail. The vendor shall not construe this paragraph as inviting deviation or implying that any deviation will be acceptable. Offers of alternative or equivalent goods may be rejected; and if offered, must be supported by independent documentary verification of equivalence to the specified goods.
- 6) Technical Specifications. Means, as used herein, a specification that documents the requirements of a system or system component. It typically includes functional requirements, performance requirements, interface requirements, design requirements, development standards, maintenance standards, or similar terms. Compliance with technical specifications is mandatory

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Section IV: Mandatory Technical Requirements/Specifications

Requirement #1 Statewide Uniform Price (SESSION LAW 2005-323 SENATE BILL 223)

- 1) The vendor must quote a statewide uniform price for each unit of the equipment. Vendors should bid their best and final offer since additional negotiations or subsequent offers may not be solicited.
- 2) The vendor is not required to submit a cost for all equipment in the RFP, but all equipment bid must meet the mandatory requirements of this RFP.

Requirement #2 Federal Requirements (SESSION LAW 2005-323 SENATE BILL 223)

- 1) The proposed voting system must comply with all federal requirements for voting systems required during the term of the contract awarded the vendor. During the term of this contract, the vendor will be required to upgrade or modify systems previously sold under this contract to continue meeting the federal requirements as they are currently stated or modified in the future.
- 2) Terms and conditions of such upgrading and modification shall be subject to offers, requests and negotiations during the RFP process.
- 3) The proposed equipment must meet all standards as outlined in the 2002 Voting System Standards adopted by the Federal Election Commission.

Requirement #3 Independently Tested and Verified (SESSION LAW 2005-323 SENATE BILL 223)

- 1) The proposed equipment must have been independently tested and verified through EAC/NASED.
- 2) The proposed equipment must be certified by EAC/NASED to the 2002 Voting System Standards at the time of the RFP bid opening on November 4, 2005.
- 3) Proof of testing and verification must be provided with the RFP response.

Requirement #4 Performance Bond or Letter of Credit (SESSION LAW 2005-323 SENATE BILL 223)

The vendor shall post a bond or letter of credit to cover damages resulting from defects in the voting system. Damages shall include, among other items, any and all costs of conducting a new election by counties and the State attributable to those defects. The bond or letter of credit to cover damages shall be effective at the time of installation and during the time of use by the State or a county of the voting systems and equipment provided by the vendor. Damages resulting in a delay of installation, as promised by a vendor, shall also be covered. (see Section VI number 6)

Requirement #5 Proposal Bond

- 1) The vendor must include a proposal bond with its RFP proposal.
- 2) The proposal must be accompanied by an acceptable security in the amount of \$100,000.00. The security must be in the form of a bond, irrevocable letter of credit, certified check, or cashier's check (hereinafter, "security") payable to the North Carolina Office of Information Technology Services (ITS) and must be placed in the front of the vendor's proposal. The submission of an acceptable security is a condition precedent to a valid proposal, and the amount of the security is not negotiable or contestable. Any proposal received without the security will be rejected without further consideration.
- 3) The security binds the vendor to the commitments made in writing in the vendor's proposal. The security will be forfeited in the event the awarded vendor, at any time during the contract negotiation process, refuses to honor commitments made in its proposal, reneges on pricing, takes exception to any term or condition that was not addressed in the vendor's written proposal, or fails to execute a contract as anticipated in the RFP and the vendor's proposal, including documented exceptions, within fifteen (15) working days after the vendor's initial receipt of the project contract from ITS, unless an extension is agreed to by ITS.
- 4) As stated in the RFP, the vendor may take exception to any point without incurring any liability to provide items to which an exception has been taken. Likewise, the State has no obligation to accept any proposed exception. Should the State decide, at its sole discretion and at any point in the process, that an exception is NOT

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acceptable; the State will reject the vendor's proposal and return the vendor's security.

5) The vendor's security will be returned promptly after ITS and the successful vendor have executed a contract or within ninety (90) days after opening the proposals if no award has been made. In the event that the successful vendor fails to accept the certification of award, its posted security will be returned within a reasonable and prudent time as determined by the State.

Requirement #6 Escrow Account (SESSION LAW 2005-323 SENATE BILL 223)

- 1) With respect to all voting systems using electronic means, the vendor must agree to do all of the following as outlined in G.S. 163-165.9A within fifteen (15) working days of the contract award:
 - a) The vendor shall place in escrow with an independent escrow agent approved by the State Board of Elections all software that is relevant to functionality, setup, configuration, and operation of the voting system, including, but not limited to, a complete copy of the source and executable code, build scripts, object libraries, application program interfaces, and complete documentation of all aspects of the system including, but not limited to, compiling instructions, design documentation, technical documentation, user documentation, hardware and software specifications, drawings, records, and data. The documentation shall include a list of programmers responsible for creating the software and a sworn affidavit that the source code includes all relevant program statements in low-level and high-level languages.
 - b) The vendor shall notify the State Board of Elections of any change in any item required to be escrowed by this subsection.
 - c) The chief executive officer of the vendor shall sign a sworn affidavit that the source code and other material in escrow is the same being used in its voting systems in this State. The chief executive officer shall ensure that the statement is true on a continuing basis.
 - d) The vendor shall promptly notify the State Board of Elections and the county board of elections of any county using its voting system of any decertification of the same system in any state, of any defect in the same system known to have occurred anywhere, and of any relevant defect known to have occurred in similar systems.
 - e) Penalties. Willful violation of any of the duties in subsection (a) of G.S. 163-165.9A is a Class G felony. Substitution of source code into an operating voting system without notification as provided by subdivision (a)(2) of this section is a Class I felony. In addition to any other applicable penalties, violations of this section are subject to a civil penalty to be assessed by the State Board of Elections in its discretion in an amount of up to one hundred thousand dollars (\$100,000) per violation. A civil penalty assessed under this section shall be subject to the provisions of G.S. 163-278.34(e)."

Requirement #7 Access to Escrow Account (SESSION LAW 2005-323 SENATE BILL 223)

- 1) With respect to all voting systems using electronic means, the vendor must agree to provide access to all of any information required to be placed in escrow by a vendor pursuant to G.S. 163-165.9A for review and examination by the State Board of Elections; the Office of Information Technology Services; the State chairs of each political party recognized under G.S. 163-96; the purchasing county; and designees as provided.
- 2) The vendor must separately agree with the purchasing county that if it is granted a contract to provide software for an electronic voting system but fails to debug, modify, repair, or update the software as agreed or in the event of the vendor having bankruptcy filed for or against it, the source code described in G.S. 163-165.9A(a) shall be turned over to the purchasing county by the escrow agent chosen under G.S. 163-165.9A(a)(1) for the purposes of continuing use of the software for the period of the contract and for permitting access to the authorized persons for the purpose of reviewing the source code.

Requirement #8 Financial Statements and References

- 1) The vendors' proposal shall provide:
 - a) **Total Annual Revenue:** State the prime vendor's and each subcontractor's total annual revenue for the past five (5) years if the company has been in business, either as a single entity or as a division, subsidiary, or owned affiliate of a parent company. Indicate the revenues associated with the provision of services relevant

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to the provision of goods and services to election offices. If this information is not available for five (5) years the vendor and the subcontractor(s) shall state the reason(s) why the information is not available. It is not acceptable for a vendor to respond that detailed financial information will be provided only after the vendor is selected as an apparently successful vendor. Failure to provide adequate financial information might lead to disqualification of the vendor from further consideration in this procurement.

- b) **Annual Reports:** Include the prime vendor's and each subcontractor's most recent annual report and Audited Financial Statements (or SEC filing 10K) for the past five (5) year if available. If this information is not available for five (5) years the vendor and the subcontractor(s) shall state the reason(s) why the information is not available.
- c) References: The vendor must describe its customer base including a profile of geographical areas served, customer size, and type of solutions and services provided. Submit the company names, addresses, telephone numbers, contacts, and a brief contract description of clients in the United States for whom comparable projects have been completed.

Requirement #9 **Voting System Certification** (SESSION LAW 2005-323 SENATE BILL 223)

- 1) All proposed equipment, selected by the RFP evaluation committee for further consideration, shall be reviewed by the State Board of Elections to determine if the equipment proposed is compliant with federal and state laws.
- 2) The certification process shall include a review of security, application vulnerability, application code, wireless security, security policy and processes, security/privacy program management, technology infrastructure and security controls, security organization and governance, and operational effectiveness, as applicable to that voting system.
- 3) Equipment examined by the State Board of Elections and <u>NOT</u> certified shall be disqualified from further consideration in this procurement.
- 4) Any proposed modification to a certified voting system shall require a recertification by the State Board of Elections. Enhancements to voting systems may be approved by the Executive Director of the State Board of Elections as allowed under the provisions of 8 NCAC 4.0302(b) without recertification by the State Board of Elections.
- 5) All equipment purchased under a contract awarded to a vendor in the State of North Carolina shall be maintained at the same level of certification as the vendor's most recent equipment. All upgrades, improvements and needed changes in the voting system either offered by the vendor or required by Federal or State law, order, certification requirement, or other mandate shall be made to any voting system in place, later sold and placed, or in the process of being placed during the term of the contract. This applies to all hardware, firmware, and software that is part of or associated with the voting system which is sold by the vendor.
- 6) The vendor shall be required to supply the State Board of Elections with two (2) copies of all certified software within fifteen (15) working days of the contract award. The State Board of Elections will not copy or distribute this software and agrees to use it only for the purpose of evaluation, testing and training. The State Board of Elections will pay maintenance and licensing fees for certified software in its possession per this contract after the initial first year warranty.
- 7) The vendor shall supply the State Board of Elections any certified upgraded firmware/software for distribution to the counties that purchased systems that are designed to utilize such upgraded firmware/software. The State Board of Elections shall manage the distribution and installation of all upgrades.

Requirement #10 Equipment Delivery

- 1) The vendor shall agree to deliver for acceptance testing at least fifty percent (50%) of the total number of voting units ordered within thirty (30) days of the placing of the order with a North Carolina county.
- 2) The vendor shall agree to deliver the remainder of all ordered voting units and system components for acceptance testing within sixty (60) days of the placing of the order with a county.

Requirement #11 North Carolina Office (SESSION LAW 2005-323 SENATE BILL 223)

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- 1) The vendor shall maintain an office in North Carolina with sufficient staff and resources to service the contract.
- 2) Vendors shall notify the State Board of Elections within thirty (30) working days of the award of a contract their office location and contact information.

Requirement #12 Training Program

- 1) The vendor must provide a training plan that will be offered to the counties purchasing from this contract with its submitted proposal. The training program shall be offered to all counties that purchase a vendor's equipment on all phases of the Voting System(s) for one complete Federal Election cycle (i.e. 2006 Primary Election and 2006 General Election). Training shall be sufficient to the point that State and County Election personnel shall be able to operate the system(s) without continuous support by the vendor. All training programs shall have prior approval by the State Board of Elections. The vendor shall describe how the training shall address, but not be limited to, the following topics:
 - Programming of units;
 - Preparation of each individual unit;
 - Preparation of polling place to accept voting units;
 - Electronic transmission of election results:
 - Tabulation of results;
 - Equipment and software used at the central counting station;
 - Methods of ensuring the accuracy of precinct results;
 - Full understanding of the audit procedures;
 - Conduct of a recount:
 - Conduct of a contested election;
 - Records preservation;
 - Printing, designing and reformatting election reports;
 - Troubleshooting to solve temporary problems;
 - Safeguards to prevent and detect tampering or theft;
 - Hot points for system errors;
 - Training on the use of the Election Management System to design and layout ballots;
 - Setting up and testing the voting equipment;
 - Suggestions for precinct set-up;
 - Operation of the voting unit from start to finish;
 - Processing of all type of voters, (the in-person voter, the absentee voter, and the provisional voter);
 - Troubleshooting methods to quickly identify and resolve any problems;
 - The opening and closing of polling locations on Election Day;
 - Proper operation and security for modem transmission of election results (if applicable);
 - Printing of zero counts before the polls open;
 - Assisting voters who require help while in the voting process;
 - Immediate determination of voting unit problems;
 - Using the battery back up during electrical failure;
 - Taking a malfunctioning piece of equipment out of service;
 - Closing the polls and producing results in any of the methods available for that particular unit;
 - How and when to place service calls.
- 2) The proposal shall include a description and samples of the materials the vendor will provide the State Board of Elections and purchasing counties and assist in preparing, for use in community outreach activities in the counties that select the vendor's system for implementation.

Requirement #13 **DRE Specifications**

1) The proposed DRE voting system and/or vendor:

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a) Must generate a paper record of each individual vote cast, which paper record shall be maintained in a secure fashion and shall serve as a backup record for purposes of any hand-to-eye count, hand-to-eye recount, or other audit.

- b) Must provide that the paper record generated by the system be viewable by the voter before the vote is cast electronically, and that the system will permit the voter to correct any discrepancy between the electronic vote and the paper record before the vote is cast.
- c) Shall detail how the paper record is securely maintained and describe, if any, the methods employed to automate the auditing of the voter records (i.e. barcodes, audio, etc.).
- d) Shall provide each voter with a summary screen at the end of the ballot showing each of the voter's selections for each position, office, or issue on the ballot prior to final vote being cast. The summary screen shall clearly indicate all "undervotes." The vendor's narrative shall discuss in general terms the procedural steps taken by the program to assure that the selections made by the voter are reflected accurately on the summary screen. The vendor's narrative or attached documentation shall provide examples of the summary screen.
- e) Shall operate under a procedure that does NOT normally require an election worker to activate DRE voting units except where the voter requests and is entitled to voting assistance under the provisions of the law. The vendor's proposed system shall operate under a procedure by which the voter activates or initiates the voting session at all DRE voting units. Vendors' proposals shall contain a narrative description of the means by which the voter receives and uses a physical, electronic, biometric, or other "device" through which to initiate the voting session on the vendor's proposed DRE voting system. This narrative shall contain descriptions of the procedures by which: (1) an authorized election official creates or activates the device; (2) the voter uses the device to activate the DRE voting unit and initiate the voting session; and (3) election officials retrieve, if at all, the device once it has been used in a voting session. There also shall be a full disclosure by the vendor of how the DRE system shall operate so as to comply with the curbside voting requirements of GS 163-166.9. The curbside requirements may be meet either by the DRE itself or a procedure associated with the use of the DRE.
- f) Shall describe the DRE's ability to be programmed with all county ballot styles for use in one-stop or provisional voting.
- g) Shall discuss the method of calculating the maximum number of cast ballots that can be stored on a DRE for a single election.
- h) Shall prevent additional activation of the DRE when the maximum number of cast ballots that can be stored has been reached.
- i) Shall describe how the system supports standard interfaces through a laptop computer or electronic pollbook to generate electronic, biometric, or other "device" through which to initiate the voting session.
- j) Shall contain a narrative description of technical procedures through which the DRE system accepts and uses the device to activate the DRE voting unit and prepares it to accept input, deactivates the device, renders the device incapable of being used by the same voter to cast a subsequent ballot, and renders the device incapable of being used by another voter without receiving authorization from an election official.
- k) Shall prevent a voter from selecting more than the allowable number of candidates or proposals in the ballot item.
- 1) Shall provide a means to alert each voter to any and all "undervotes" before the voter is able to cast a final vote.
- m) Shall contain detailed narrative discussing (a) generally how the voting equipment software applies logic and algorithms to arrive at a determination of when an undervote exists, (b) specifically how the voting equipment configuration notifies the voter that an undervote exists, (c) specifically how the voting

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equipment configuration assists the voter in returning to the ballot to change any undervote and modify any other selections made, (d) specifically how the voter is notified if any undervote continues to exist after the actions specified in item "c" above, and (e) specifically how the voting equipment configuration assists the voter in casting a final vote after having made modifications or not made modifications in any undervote situation.

- n) Shall include documentation concerning the use of touch screen or other display and selection technology, including but not limited to (a) technical documentation describing the nature and sensitivity of the tactile device (if the system uses touch screen technology), (b) technical documentation describing the nature and sensitivity of any other technology used to display and select offices, candidates, or proposals, (c) any mean time between failure (MTBF) data collected on the vote recording units, and (d) any available data on problems caused for persons who experience health problems due to the DRE voting units' screen refresh rate.
- o) Shall specify the resolution of screen and touch sensitivity (if applicable) on the DRE vote recording unit.
- p) Shall employ only industry-standard screen resolution and touch sensitivity (if applicable) on its DRE vote recording units.
- q) Shall specify all fonts and ranges of font sizes used by the DRE vote recording unit proposed. The proposed vote recording units shall employ only industry-standard fonts and font sizes.
- r) Shall specify the ability to display images (bmp, tif, jpeg, etc.) on a ballot display.
- s) Shall specify the definition of screen sizes (preferably in diagonal inches of viewable screen).
- t) Shall specify the definition of color options, the user interface with the system (such as touch screen, wheel activated, voice-activated commands, and sip-and-puff devices).
- u) Shall include screen shots of system screens, workflow diagrams demonstrating the procedures for using the system, results of any available ergonomic analyses of the hardware and software screens, market research or other documented research reports concerning the system's ease of use, and news articles or reports containing voter reactions to the proposed system.
- v) Shall specify all additional languages, other than English, currently supported by the proposed DRE voting system.
- w) The vendor's proposed system shall provide the capability to print and prepare a file containing the audit trail of all units contained in the voting system component audit log/inventory for an election.
- x) Vendors' proposals shall contain a description of the printed reports available containing data from this voting system component audit log/inventory including:
 - At least one printed report shall contain a list of specific units that were used successfully for voting during the election cycle, units that failed during the election cycle, and units that were not used in the election cycle.
 - A report of all dates, times, and transactions recorded on each voting system component.
- y) Vendors' proposals shall contain a detailed description of procedural steps required to archive the audit log/inventory for permanent storage
- z) Vendors' proposals shall include a description of any third-party software used in the language translation process that resides outside the automated ballot layout software.

Requirement #14 DRE/Optical Scan General Requirements

- 1) The proposed DRE/Optical Scan voting systems and/or vendor:
 - a) Shall produce an accurate record of each vote cast.
 - b) Shall describe in detail the manufacturing and internal testing steps taken to assure that the vote recording hardware, firmware, and software operate to produce an accurate record of each vote cast.
 - c) Shall include a list of all manufacturing process certifications (such as the ISO 9000- family of certifications) that it has obtained specifically for its (1) voting system manufacturing operations and (2) software design, programming, maintenance, and documentation.

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- d) Shall report accurately all votes cast.
- e) Shall describe in detail the manufacturing and internal quality assurance testing and documentation steps taken to assure that the vote recording hardware, firmware, and software accurately report all votes cast.
- f) Shall contain control logic and programming methods to detect errors and provide corrective actions when errors are detected.
- g) Shall describe in detail the manufacturing and internal testing steps taken to assure that the control logic and programming methods detect errors and provide corrective actions when errors are detected.
- h) Shall provide details of both manual and automated procedures used by the vendor to identify, track, and resolve system problems such as (a) hardware, firmware, and software malfunctions, (b) performance problems, and (c) data corruption in a manner and timeframe that allows elections to be conducted in a reasonable and timely fashion.
- i) Shall state the name of any automated incident, issue, or problem tracking system used by the firm in providing support to its election system clients.
- j) Shall provide sample reports from any automated incident, issue, or problem tracking system that the firm proposes to use in providing support services during the life of the contract with the State.
- k) Shall contain, at a minimum, the hardware components necessary to process voters and deliver totals for closing the polls, i.e., (a) voting units, (b) controller unit (if required for system), (c) printers with DREs for production of paper ballots as required by North Carolina law, (d) printers for production of zero tapes and overall results, and (e) other technologies capable of producing independent verification of votes.
- 1) Shall include and provide a backup electrical power supply to support the operation of all hardware required to conduct an election should the need arise.
- m) Must provide the capability for the DREs, polling place control units (if applicable), attached paper ballot printers, and optical scan voting units to operate on backup battery power for a minimum of three (3) hours after interruption of commercial electrical power.
- n) Shall describe the abilities of the DRE voting units, control devices (if applicable), attached paper ballot printers, and other attached independent voter verification units to be connected to commercial electrical power both when in use and when in storage. If the DRE voting unit, paper ballot printer, or control unit (if applicable) is contained in any type of self-contained case, vendors' proposals shall specify if the case must be opened and the machine removed in order to attach to electrical connection for the purpose of charging batteries.
- o) Shall specify the battery backup capabilities being proposed in the technical proposal and in the cost proposal for all DREs, controllers (if applicable), printers, and optical scan voting devices.
- p) Shall contain narrative specifications of the following for both the individual DRE units, ballot printers, precinct control units (if used in the polling places), and optical scan voting devices:
 - The internal output capabilities, capacity, and longevity (in hours) of the batteries required for all devices, assuming that the devices are in use and not in an idle condition,
 - The speed of cutover from commercial power to battery power upon sudden loss of commercial power,
 - Additional external battery requirements (if any) to keep the voting units, attached paper ballot printers, and controllers (if applicable) in operation for a full day (13+ hours) of voting activity,
 - The system's ability to allow authorized users to carry out checks of the charge status for all batteries without opening either the DRE unit or any separate battery enclosure. (The preferred method will be through viewing either an electronic display on the DRE itself or by viewing a battery status/warning indicator on the DRE or a separate battery enclosure.)
 - Any recommended or required battery maintenance or replacement activities.
 - The ability of backup or redundant polling place control units (if applicable) to function properly if

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placed into use by providing such critical functions as assuring that voters receive the correct ballot.

- q) Shall provide vote recording equipment for the accurate storage and tabulation of write-in votes.
- r) Shall describe in detail the manufacturing and internal testing steps taken to assure that the proposed DREs and optical scan voting devices accurately store and tabulate write-in votes when cast.
- s) Shall describe in detail the procedures required by voters to cast write-in votes and review their write-in actions for both DREs and optical scan voting systems.
- t) Shall describe in detail the procedures required by election officials to tabulate write-in votes cast by voters on both DREs and optical scan voting systems.
- u) Shall provide a means to notify the voter of "overvotes" and provide the opportunity to correct the official ballot prior to casting a final vote.
- v) Shall contain a narrative discussing the ability of the proposed optical scan voting system to notify the voter of "undervotes" or "overvotes" by selected offices.
- w) Shall contain a narrative discussing (a) specifically how the voting system software arrives at a determination of when an overvote exists, and (b) specifically how the voting equipment configuration notifies the voter that s/he has attempted to overvote or that the system has prohibited an overvote.
- x) Shall contain narrative discussing specifically how their voting systems, of any type proposed, report on overvotes.
- y) Shall allow the voter to change his/her selection during the act of voting, but prior to carrying out the final action to cast the ballot.
- z) Shall contain a description of the procedural steps required for voters using their proposed DRE system to change their selections prior to carrying out the final action to cast and record a ballot.
- aa) Shall document if there are any limits on the number of times a voter may change a selection prior to carrying out the final action to cast and record a ballot.
- bb) The vendor's proposed DRE and optical scan voting devices shall provide the capability to download results easily from provisional ballots into the final vote tabulation system and integrate those results easily and accurately into vote tally results from all other voting devices, once those provisional ballots have been determined to be eligible for counting.
- cc) Shall document if there were any instances in the vendor's internal testing or Independent Testing Authority testing of the proposed system in which voter selection changes affected the accuracy or validity of the final ballot cast by a voter.
- dd) Shall protect and maintain the privacy and identity of all voters.
- ee) Shall include both physical (that is, ergonomic) and software capabilities to ensure that the secrecy of the ballot is extended to the voter through all phases of the voting and tabulation process. This process includes the generation, review, and storage of paper ballots produced by DREs. This process shall also include the generation, review, and storage of other independent verification capabilities, such as audio tape, digital recordings, or other electronic verification capabilities.
- ff) Shall contain a detailed narrative of the proposed systems' technical characteristics that assure their proposed systems' compliance for ballot privacy and confidentiality.
- gg) Shall contain a narrative description of the physical (that is, ergonomic) characteristics of the system that protects and maintains voter privacy during the act of voting.
- hh) Shall contain a detailed description of the proposed voting system's architectural, programmatic, and procedural attributes that assure the privacy, confidentiality, and identity protection of all voters' acts on the proposed DREs, including those that produce a paper ballot, and optical scan devices.
- ii) Shall describe any known circumstances under which (a) a voter's identity might become known through access to the voting system or (b) a voter's identity might be matched to the ballot the voter cast in an election on the vendor's proposed DREs and optical scan devices.
- jj) Shall include only DRE, or optical scan voting devices that are "tamper-proof" while in a storage configuration either in storage or the polling location.

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- kk) Shall describe the DRE and optical scan voting devices' (a) physical and (b) electronic characteristics that prevent unauthorized use and tampering when the equipment is in storage or in a polling location.
- ll) Shall describe required and recommended operational procedures to be used by election officials to prevent unauthorized use and tampering when the equipment is in storage or in a polling location.
- mm) Shall describe the adaptability of the voting system for possible future Instant Runoff Voting (IRV) use.
 - nn) Shall contain a narrative description of the proposed voting system's ability to comply with voting accessibility requirements of both federal and state law requiring "independence and privacy" in voting for those voters with disabilities. There also shall be a full disclosure by the vendor of how the system shall operate so as to comply with the curbside voting requirements of GS 163-166.9. The curbside requirements may be met either by the voting system itself or a procedure associated with the use of the voting system.

Requirement #15 DRE/Optical Scan Testing

- 1) The proposed DRE/Optical Scan voting systems and/or vendor:
 - a) Shall permit diagnostic testing of all the major components within each unit.
 - b) Shall describe in detail the diagnostic testing procedures and capabilities of the proposed system including but not limited to:
 - Acceptable steps required to initiate, carry out, and review diagnostic test results,
 - A detailed description of the diagnostic test results,
 - An acceptable amount of time to cycle through a complete diagnostic test for each unit from initiating power up of the device to inspecting the results of the diagnostic test.
 - c) Shall provide logic and accuracy (L&A) tests in the memory of the main processor and any programmable memory device used on Election Day.
 - d) Shall provide an automated test routine to run a complete L&A test of all contests loaded on appropriate system components, using simulated vote totals that can be verified by both precinct reports and/or an election summary. This capability shall include the ability to produce accurate zero printouts before each election and a precinct tally printout at the close of each election.
 - e) Shall describe the logic and accuracy testing procedures and capabilities of the proposed systems including but not limited to:
 - Acceptable steps required to initiate the test, carry out the test, and review the logic and accuracy test results.
 - A detailed description of the logic and accuracy test results, and
 - An acceptable amount of time to cycle through a complete logic and accuracy test for each unit from initiating power up of the unit to inspecting the results of the logic and accuracy test.

Requirement #16 Voting Accessibility Requirements

- 1) The vendor and/or proposed voting system software, hardware, and firmware:
 - a) Shall meet all requirements of Federal and State law that address accessibility to voting systems. These laws include, but are not necessarily limited to, (a) the Help America Vote Act, (b) the Americans with Disabilities Act, and (c) the Voting Accessibility for the Elderly and Handicapped Act. There also shall be a full disclosure by the vendor of how the system shall operate so as to comply with the curbside voting requirements of GS 163-166.9. The curbside requirements may be meet either by the voting system itself or a procedure associated with the use of the voting system.
 - b) Shall provide audio instructions for the ballot and a mechanism for the visually impaired voter to cast a ballot

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on its proposed systems, either on the voting unit itself or on a separate unit designed for this purpose.

- c) Shall provide narrative describing the procedure for constructing the audio ballot, whether it is through text-to-speech synthesis, voice recording, or any other technology employed by the voting unit.
- d) Shall provide estimates of "typical" sizes of audio files (such as .WAV files) associated with audio ballots.
- e) Shall state clearly the limits on (a) the number of such files and (b) the sizes of the files on the proposed voting units.
- f) Shall describe the equipment and procedure required for a visually impaired voter to cast a ballot. This description shall include a discussion of whether all of the supplied units are accessible in this manner or whether a unique voting unit is required for this level of accessibility.
- g) The physically accessible devices shall provide at a minimum the following capabilities:
 - Must provide non-visual ballot access using a method that includes touch controls and audible speech,
 - Must provide a review of the completed ballot to the voter before submitting his or her vote,
 - Must communicate to the voter the fact that the voter has failed to vote in a race or has failed to vote the number of allowable candidates in any race and require the voter to confirm his or her intent to undervote before casting the ballot,
 - Must prevent the voter from overvoting any race,
 - Must allow a voter to be able to write in a candidate name in races which allow write-in candidates,
 - Must be able to review their write-in input to the interface, edit that input, and confirm that the edits meet their intent,
 - Must be a clear, identifiable action that the voter takes to "cast" the ballot,
 - Must make clear to the voter how to cast a ballot, so that the voter has minimal risk of doing so accidentally, but when the voter intends to cast the ballot, the action can be easily performed,
 - Once the ballot is cast, the system must confirm to the voter that the action has occurred and that the voter's process of voting is complete,
 - Once the ballot is cast, the system must preclude the voter from modifying the ballot cast or voting or casting another ballot.
- h) Shall describe the steps taken to assist color-blind voters in voting using the proposed DRE equipment.
- i) Shall describe how the system supports an enlarged ballot for the visually impaired and provide a narrative regarding the process by which a voter selects to use the enlarged ballot.
- j) Shall provide voters with limited dexterity with ready access to the ballot.
- k) Shall describe how the voter is able to control the accessibility options, including speed and volume of the audio component through the DRE interface.
- 1) Shall describe specifically how the proposed physically accessible voting units provide voting accessibility to voters with limited or no hand capacity.
- m) If the voting units are contained in a voting booth, the booth legs must provide sufficient width to allow wheelchair access, or the vendor shall provide for an alternative solution, which the proposal shall describe in detail.
- n) Shall contain a description of options available to voters with limited dexterity for using the vendor's proposed DRE and optical scan system.
- o) Shall contain a description of the steps a voter who uses a wheelchair and a voter who requires substantial

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assistance walking would follow to access the voting units and voting booths.

Requirement #17 Audit Requirements (SESSION LAW 2005-323 SENATE BILL 223)

- 1) Vendors' proposals shall contain a description of the vote audit techniques that are incorporated into the proposed (a) DRE system, (b) optical scan voting system, and (c) the election management and tabulation software.
- 2) This narrative shall contain an identification of (1) the systems' redundancy systems for recording votes and (2) the back-up devices or audit functions of the system that can be used to independently verify the total votes cast for any particular candidate or on any particular ballot issue.
- 3) The narrative responding to this requirement shall contain a statement of the vendor's experience incorporating independent, third-party, electronic auditing systems (either hardware or software) into their proposed DRE and proposed optical scan systems and the vendor's agreement to enter into an operational arrangement with independent third-parties to install and use electronic auditing systems (either hardware or software) if required to do so by Federal, State, or local statute or regulation.
- 4) The vendor's proposed systems shall provide well-documented, secure procedures to conduct recounts and contested elections pursuant to North Carolina election law.
- 5) Vendors' proposals shall describe the procedures required to conduct a recount using the results stored in or produced by each DRE vote recording unit that is equipped with a paper ballot printer, and (b) each optical scan voting system.
- 6) The vendor's proposed systems shall provide the capability for all vote recording units to retain and produce an accurate record of all votes cast prior to a failure of a unit, whether the failure is caused by an internal or external cause. An example of an internal failure would be failure of the vote recording equipment's memory, processor, or primary storage device. An example of an external failure would be a complete power failure and failure of any backup power supply.
- 7) The vendor's proposed system shall maintain an automated audit log and inventory of all devices and system components configured and placed in the inventory for use in an election.
- 8) The vendor's proposed audit log/inventory shall contain at least (a) hardware logs, (b) component failure data, (c) detailed activity logs on each of the system components used in an election, (d) ballot images used on each DRE machine, (e) ballot types accepted by optical scan voting machines, and (f) operator activity entries.
- 9) Vendors' proposals shall describe in detail: (a) how the system generates and stores the audit log/inventory entries, (b) the procedures that elections personnel must use to retrieve audit logs from each unit, (c) the procedures that elections personnel must use to consolidate the audit logs from individual units into a single audit log/inventory, (d) the data elements included in the audit log/inventory subsystem(e) procedural steps required by a system administrator to maintain the component audit log/inventory on the individual components, (f) procedural steps required by a system administrator to maintain the consolidated audit log/inventory, (g) the system security capabilities to restrict user authorizations and access rights for creating, reading, modifying, and deleting this audit log/inventory, and (h) the abilities of the system administrator ONLY to access the audit/log inventory, copy it to an archive file for permanent storage, output the log file in an ASCII file format for use with various database and spreadsheet programs, and "zero out" or initialize the audit log for subsequent use.

Requirement #18 Tabulation System

- 1) The vendor's election management and vote tabulation software system and/or vendor:
 - a) Shall have the capacity to include in precinct returns the votes cast by voters outside of the voter's precinct as required by G.S. 163-132.5G.
 - b) Shall provide a mechanism for the definition of the ballot, including the definition of the number of allowable choices for each office and contest, and for special voting options such as write-in candidates.

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- c) Shall provide for automated and manual ballot layout for the DRE system.
- d) Shall provide a detailed description of the operations for setting up and preparing ballots for the DRE units, optical scan ballots for precinct voting, ballots for use in one-stop and absentee voting, and sample ballots.
- e) Shall provide flexibility to allow modifications and corrections to the ballot layout.
- f) Shall provide for all voting options and specifications as provided for in North Carolina election law.
- g) Shall describe how the system will generate all required master and distributed copies of the voting program in conformance with the definition of the ballot for each polling place and voting unit, including devices required to facilitate absentee voting and disabled voters.
- h) Shall describe how any additional accessibility capacity units are programmed and installed.
- i) The vendor shall describe any custom programming services available to the county(ies) upon agreement of the rates and/or amounts to be paid by the county(ies). Custom programming shall be created, delivered, installed, and tested as mutually agreed upon in advance in writing by the county(ies) and the vendor. Such agreement shall be in the form of an agreement which is executed by the respective county(ies) and the vendor.
- j) Shall log all user transactions in a user transaction audit log including data such as "before" and "after" versions of the change. Each audit log entry shall include additional audit trail information such as the type of change, reason for the change, date of the change, time of the change, and user making the change. Only the system administrator, and users authorized by the system administrator, shall have any access to read, search, copy, print, archive, or purge the transaction audit log.
- k) Shall have a high level of integration between the ballot layout subsystem and the vote tabulation subsystem. This integration shall permit and facilitate the automatic transfer of all ballot setup information from the automated ballot layout module to the single ballot tabulation system that will be used in a fully integrated manner for DRE, optical scan, and any other voting devices proposed by the vendor.
- 1) Shall provide the system administrator and users with the following functional features:
 - An ability to obtain a list of all application-related error messages on demand, including the recommended steps to clear and correct the error condition,
 - Clear and useful error messages from an error-handling module,
 - Clear and useful warnings, informational, and notice messages,
 - An ability for the system administrator to read, search, copy and print error logs that report error conditions or system failures,
 - An ability for the system administrator to maintain, archive to backup media, and purge the system error information as required for efficient system administration, and
 - An option for access to specified error information by authorized users, with the stipulation that no one
 other than the system administrator shall have the access privilege to archive, delete, or purge system
 error logs.
- m) Shall contain a detailed description of the configuration control and management software used by the vendor to assure that only correct, tested and certified versions of firmware and software are delivered and installed in North Carolina at all times. If the vendor uses internally developed software to manage its voting system configuration, the proposal shall state that condition and provide a general description of the software. If the vendor uses a commercial software product for its configuration control and configuration management, the proposal shall provide the name of the commercial configuration control software in use. Under either circumstance, the vendor shall state how long it has used the in-house or commercial configuration control software.
- n) Shall provide for the tabulation of votes cast in split precincts, where all voters residing in one precinct are

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not voting the same ballot style.

- o) Shall provide for the voting of multiple ballot styles and multiple ballot districts at a single election precinct.
- p) Shall provide detailed narrative that describes how the voting devices and systems' programs determine which ballot style a voter receives and how the systems' processes accurately assure that voters who reside in split precincts receive the correct ballot.
- q) Shall provide narrative that describes how the systems' programs tabulate and report votes accurately for the ballot styles cast in split precincts.
- r) Shall provide software so that voting systems are capable of auto-mapping into the State Election Night Reporting System (ENRS) and interface with the State Election Information Management Systems (SEIMS). The system standards should identify both desired and required database characteristics including required and desired audit reports and results reporting requirements.

Requirement #19 System Security Requirements

- 1) The State of North Carolina requires a very high level of security for the database management system that supports the election management and vote tabulation application. The vendor's software solution for election management (such as election and ballot setup) and vote tabulation shall:
 - a) Provide a database security management capability that allows up to two persons, identified by each County elections office, to act as security and recovery managers, controlling access and authorization privileges for all other users. These users will be the system administrators. It shall be the responsibility of the vendor to specify and implement this security capability during the implementation. It shall be the responsibility of the vendor to implement the database management system in such a manner that no one can circumvent the application software to gain unauthorized or unaudited access to the underlying database.
- The vendor's final implementation shall prohibit a computer user, who is not an authorized user of the election management and vote tabulation system, from loading a software package such as Microsoft Access or Microsoft Excel on the computer running the election management system and gaining any kind of access to the election management system.
- 2) Vendors' proposals shall state a clear, unequivocal commitment that the election management and voter tabulation software user's application password is separate from and in addition to any passwords required by the network operating system, a server, and the client operating system.
- 3) The vendor's system shall support automated application password expiration at intervals specified by a central system administrator.
- 4) Vendors' proposals shall discuss the steps required by the system administrator to implement and maintain automated password expiration. This discussion will include narrative concerning the degree to which the application password expiration capabilities are based on (a) the server or client's operating system, (b) the software application, or (c) both.
- 5) Vendors' proposals shall describe in detail the system's requirements for the application's password construction including, but not limited to:
 - a) Application password length requirements,
 - b) Required character composition of application passwords,
 - c) Prohibited characters in application passwords,
 - d) Whether the application passwords are stored in clear text or encrypted formats,
 - e) Which industry standards, if any, were applied in the design and implementation of application password encryption algorithms,

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f) Whether the application allows or prohibits application password recycling within specific time periods,

- g) The nature of the password recycling requirements, if any, in individual user application password use.
- 7) Vendors' proposals shall provide a narrative describing in detail ALL uses of data encryption/decryption in the proposed system, specifically as the techniques apply to data transfer and storage.
- 8) Vendors' proposals shall provide a narrative describing in detail all uses of wireless technology on all proposed equipment. Wireless technology must meet the following requirements:
 - a) There shall be no undocumented use of the wireless capability, nor shall there be any use of the wireless capability that is not entirely controlled by the voting official.
 - b) If a voting system includes wireless capabilities, then the system shall have the ability to turn on the wireless capability when it is to be used and to turn off the wireless capability when the wireless capability is not in use. If a voting system includes wireless capabilities, then the system shall not activate the wireless capabilities while the polls are open.
 - c) If a voting system provides wireless communications capabilities, then there shall be a method for determining the existence of the wireless communications capabilities.
 - d) If a voting system provides wireless communications capabilities, then there shall be an indication that allows one to determine when the wireless communications (e.g., radio frequencies) capability is active. The indication should be visual.
 - e) All information transmitted via wireless communications shall be encrypted and authenticated, with the exception of wireless T-coil coupling, to protect against eavesdropping and data manipulation including modification, insertion, and deletion.
 - f) The capability to transmit non-encrypted and non-authenticated information via wireless communications shall not exist.
 - g) All wireless communications actions shall be logged.
 - h) The log shall contain at least the following entries: times wireless activated and deactivated, services accessed, identification of device to which data was transmitted to or received from, identification of authorized user, and successful and unsuccessful attempts to access wireless communications or service.

Requirement #20 Support and Maintenance

- 1) The vendor must offer at least four (4) additional years of maintenance for use after the initial warranty period expires. Each county may elect to receive approved provider's then-current maintenance service upon payment of applicable maintenance fees, beginning at the end of the warranty period.
- 2) Maintenance services may be renewed upon written notice by the State or county prior to the contract anniversary date. Escalation of maintenance fees shall not exceed 5% per year. Any maintenance agreements shall be subject to the terms of this contract.
- 3) Vendors' proposals shall contain a sample service level agreement through which the vendor proposes to provide on-going support and maintenance to a North Carolina election jurisdiction after conclusion of any agreed upon warranty period.
- 4) The narrative of the proposed service level agreement shall include response times and the nature of the response that the contractor shall provide. Response time is defined as the maximum time period that will elapse between initial request for support from a North Carolina election jurisdiction (and its acknowledgement by the contractor) and commencement of resolution by the contractor.
- 5) The response time to a support request to the vendor is governed by the level of priority of the request as determined by the North Carolina election jurisdiction, as follows:
 - a) Severe: Critical functionality failure exists with excessive risk to the ability of the county to use the system. System or application catastrophic failure has occurred or is very likely to occur imminently.

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b) High: Desired functionality is missing. There is a high risk that the application will not perform critical functions. The issue stops county election officials from performing a function. No work-around is available.

- c) Medium/Low: Desired functionality is not as indicated in requirement, or the system misses election officials' expectations for delivering the functionality. Work-around is available. Some risk exists. May be inconvenient to the county election officials for a period of time not to exceed two weeks.
- 6) Vendor's proposed service level agreement shall include three (3) levels of onsite and telephone software support at the county elections office for 7 X 24 coverage with varying levels of response time depending upon the priority established by the county board of elections.
- 7) Vendor proposals shall contain a description of their proposed service level agreement for upgrades to the hardware, firmware, and software in a timely manner for changes required by law in regards to all system functions.
- 8) Vendor proposals shall include a description of specific plans to provide state and federal mandated system changes.
- 9) The vendor shall state the projected life expectancy of all equipment proposed including the minimum number of years that support will be available.

Requirement #21 Absentee System Requirements

- 1) The vendor's proposed reporting and tallying system for the absentee ballot system shall be capable of tallying the absentee votes as a separate precinct or allocating the absentee votes back to the voter's precinct.
- 2) The vendor's proposed system shall easily and accurately integrate absentee voting results, one-stop voting results, with Election Day results in a timely and completely accurate manner along with any necessary retrievability capacity needed.
- 3) The vendor shall describe the ability of the proposed system to produce a paper ballot for an individual voter upon computer request by an election official (Ballot on Demand).

Requirement #22 Operational and Storage Requirements

- 1) Vendors' proposals shall describe the requirements necessary for optimum operation of their proposed DRE and optical scan systems in a polling place, including but not limited to, the optimum temperature, humidity, and ambient lighting.
- 2) Vendors' proposals shall describe the requirements necessary for optimum operation of their proposed central tabulation system, including but not limited to, the optimum temperature and humidity.
- 3) Vendors' proposals shall describe the requirements necessary for optimum storage conditions for their proposed DREs, and optical scan voting equipment including but not limited to the optimum temperature and humidity.
- 4) Vendors' proposals shall describe the acceptable temperature range and humidity range in which all proposed DRE and optical scan voting equipment must be stored in order to ensure reliable operation of the voting equipment in coming elections.
- 5) Vendors' proposals shall contain a recommendation for the type of shelving or cabinetry best suited for use with the proposed DRE and medium-duty optical scan voting equipment.
- 6) Vendors' proposals shall contain an estimate of the storage space requirements, expressed in linear storage feet, for 20 of their proposed DRE voting units and all related equipment (such as controllers, booths, printers, and other peripheral equipment).
- 7) Vendors' proposals shall contain an estimate of the storage space requirements, expressed in square feet of floor space, for 20 of their proposed optical scan voting devices and all related equipment (such as voting booths).

Requirement #23 Documentation Requirements

1) The vendor's proposed system shall include a complete hardcopy set of technical documentation, database and application documentation, and end user documentation that will be delivered and considered as an integral part

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of the system.

- 2) The State of North Carolina requires that the vendor deliver four (4) complete sets of documentation to each jurisdiction in which it installs its voting devices or election management system, which shall include three (3) sets of hard copies and one (1) complete set in electronic format.
- 3) The vendors' proposal shall state clearly a commitment to provide this quantity of documentation.
- 4) Vendors' proposals shall include a listing of all collateral documentation that will be provided to each jurisdiction, including but not limited to pollworker instruction pamphlets, pollworker "flashcards" with quick instructions, and handouts for voter and community education.
- 5) The vendors' proposals shall state the numbers of pieces of each of these types of documentation will be provided as part of the installation and election preparation services rendered to each county.
- 6) The vendors' proposals shall contain a detailed description of the firm's procedures and frequencies for providing updates to the documentation as hardware, software, network, and operational changes occur.

Requirement #24 Alternate Technology (not defined as DRE or optical scan)

1) The vendor may submit a bid for alternate technology, equipment not defined as DRE or optical scan, if the proposed system is compliant with all the mandatory requirements.

Requirement #25 Software Licensing

- 1) The vendor shall include all software licensing fees for direct recording electronic (DRE), direct recording electronic (DRE) or optical scan marking systems with audio interface for non-visual access, precinct count optical scan voting equipment, optical scan voting equipment for absentee and provisional balloting, and alternate technology in the unit cost.
- 2) The vendor shall include the first year software licensing fee for central tabulation equipment in the initial unit price. Yearly software licensing fees for central tabulation equipment, after the first year, shall be attached to the Cost Proposal Table.

Section V: Cost Proposal

- 1) The vendor must list and describe any applicable proposal costs which may include the following:
 - a) Software License fees or costs
 - b) Base system software
 - c) 3rd party software, if any, required for the operation of the system
 - d) Technical and user documentation
 - e) Training including training materials
 - f) Maintenance costs, to include, per year
 - g) Technical support/customer service, per year
 - h) Upgrade costs for equipment currently in North Carolina to meet mandatory requirements
 - i) Other costs (describe)
 - j) Unlimited phone technical support for the technical staff

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Direct Recording Electronic (DRE)			
Model #	Software Version: NASED/EAC #		
Description			Unit Cost
DRE (attach list of all items include	led with initial purchase)		\$ 00.00
DRE Upgrade (cost to upgrade currently installed equipment to mandatory requirements)			\$ 00.00
Ancillary Equipment (attach list of all required equipment w/pricing not included in DRE price)			Attach list
Supplies (attach list of all required supplies w/pricing not included in initial purchase)			Attach list
Consumable Supplies (attach list of all consumable supplies w/pricing)			Attach list
Proposed maintenance cost, support for the first year after the expiration of the initial warranties.			\$ 00.00
Proposed maintenance cost, support for the second year after the expiration of the initial warranties.			
Proposed maintenance cost, support for the third year after the expiration of the initial warranties.			
Proposed maintenance cost, suppo	rt for the fourth year after the expiration o	f the initial warranties.	\$ 00.00

Direct Recording Electronic (DRE) with audio interface for non-visual access			
Model #	Software Version:	NASED/EAC #	
Description		L	Unit Cost
DRE (attach list of all items include	led with initial purchase)		\$ 00.00
DRE Upgrade (cost to upgrade currently installed equipment to mandatory requirements)			\$ 00.00
Ancillary Equipment (attach list of all required equipment w/pricing not included in DRE price)			Attach list
Supplies (attach list of all required supplies w/pricing not included in initial purchase)			Attach list
Consumable Supplies (attach list of all consumable supplies w/pricing)			Attach list
Proposed maintenance cost, support for the first year after the expiration of the initial warranties.			\$ 00.00
Proposed maintenance cost, support for the second year after the expiration of the initial warranties.			\$ 00.00
Proposed maintenance cost, support for the third year after the expiration of the initial warranties.			
Proposed maintenance cost, suppo	rt for the fourth year after the expiration o	f the initial warranties.	\$ 00.00

Optical Scan Marking System	with audio interface for non-visual access			
Model #	Software Version:	Software Version: NASED/EAC #		
Description			Unit Cost	
Optical Scan Marking Unit with	audio interface (attach list of all items include	ded with initial purchase)	\$ 00.00	
Ancillary Equipment (attach list of all required equipment w/pricing not included in hardware price)			Attach list	
Supplies (attach list of all required supplies w/pricing not included in initial purchase)			Attach list	
Consumable Supplies (attach list of all consumable supplies w/pricing)			Attach list	
Proposed maintenance cost, support for the first year after the expiration of the initial warranties.				
Proposed maintenance cost, support for the second year after the expiration of the initial warranties.				
Proposed maintenance cost, support for the third year after the expiration of the initial warranties.				
Proposed maintenance cost, support for the fourth year after the expiration of the initial warranties.				

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Bid #:ITS-002724 Cost Proposal Table (Part 2) Vendor's Name: _____

Precinct Count Optical Scan Voting Equipment			
Model #	Software Version:	NASED/EAC #	
Description		Unit Cost	
Precinct Optical Scan Unit (attach list of all items included with initial purchase)		\$ 00.00	
Optical Scan Unit Upgrade (cost to upgrade currently installed equipment to mandatory requirements)		\$ 00.00	
Voting Booths (voting booths to be used for voting w/ optical scan equipment)		\$ 00.00	
Ancillary Equipment (attach list of all required equipment w/pricing not included in hardware price)		Attach list	
Supplies (attach list of all required supplies w/pricing not included in initial purchase)		Attach list	
Consumable Supplies (attach list of all consumable supplies w/pricing)		Attach list	
Proposed maintenance cost, support for the first year after the expiration of the initial warranties.		\$ 00.00	
Proposed maintenance cost, support for the second year after the expiration of the initial warranties.		\$ 00.00	
Proposed maintenance cost, support for the third year after the expiration of the initial warranties.		\$ 00.00	
Proposed maintenance cost, support for the fourth year after the expiration of the initial warranties.		\$ 00.00	

Tabulation Equipment			
Model #	Software Version:	NASED/EAC #	
Description			Unit Cost
Tabulation Hardware (attach list of all items included with initial purchase)		\$ 00.00	
Tabulation Upgrade (cost to upgra	de currently installed equipment to mandat	ory requirements)	\$ 00.00
Absentee Hardware (attach list of all required equipment w/pricing not included in hardware price)		Attach list	
Software (list all software included in initial purchase)		Attach list	
Software License Agreements (attach list of all software licenses w/pricing after warranty)			Attach list
Supplies (attach list of all required supplies w/pricing not included in initial purchase)		Attach list	
Consumable Supplies (attach list of all consumable supplies w/pricing)		Attach list	
Proposed maintenance cost, support for the first year after the expiration of the initial warranties.		\$ 00.00	
Proposed maintenance cost, support for the second year after the expiration of the initial warranties.		\$ 00.00	
Proposed maintenance cost, support for the third year after the expiration of the initial warranties.		\$ 00.00	
Proposed maintenance cost, support for the fourth year after the expiration of the initial warranties.			\$ 00.00

Alternate Technology (not define	ed as DRE or optical scan)		
Model #	Software Version:	NASED/EAC #	
Description		Unit Cost	
Hardware (attach list of all items included with initial purchase)			\$ 00.00
Software (attach list all software included in initial purchase)			Attach list
Software License Agreements (attach list of all software licenses w/pricing after warranty)		Attach list	
Supplies (attach list of all required supplies w/pricing not included in initial purchase)		Attach list	
Consumable Supplies (attach list of all consumable supplies w/pricing)		Attach list	
Proposed maintenance cost, support for the first year after the expiration of the initial warranties.		\$ 00.00	
Proposed maintenance cost, support for the second year after the expiration of the initial warranties.		\$ 00.00	
Proposed maintenance cost, support for the third year after the expiration of the initial warranties.		\$ 00.00	
Proposed maintenance cost, support for the fourth year after the expiration of the initial warranties.		\$ 00.00	

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VENDORS WHO PROPOSE AN ALTERNATIVE COST RESPONSE MUST SUBMIT A SEPARATE DOCUMENT LABELED, "ALTERNATE COST RESPONSE".

THE STATE INTENDS TO AWARD A CONTRACT TO MULTIPLE VENDORS, HOWEVER, ONLY ONE VENDOR PER MANUFACTURER WILL BE ALLOWED.

PLACE THE COMPLETED COST PROPOSAL TABLE <u>BEHIND</u> THE LETTER OF TRANSMITTAL PAGE AND IN FRONT OF YOUR BID RESPONSE.

Section VI: Other Requirements and Special Terms

- 1) <u>Transportation Charges FOB Destination:</u> Equipment will be delivered to various locations within the State of North Carolina. Freight, handling and distribution charges shall be included in the total price of each item listed. Any additional charges included on the invoice shall not be honored for payment, unless authorized by change order. In cases where parties other than the vendor ship materials against this order, the shipper must be instructed to show the purchase order number on all packages and shipping manifests to ensure proper identification and payment of invoices. Complete packing lists must accompany each shipment.
- 2) Warranty: The bidder warrants to the State that all equipment furnished, including warranty replacement items, will be new, of good material and workmanship. The vendor shall provide a warranty and maintenance agreement through one federal election cycle (the certification of the first federal election) beginning on the date of acceptance by the county of the individual piece of equipment for all hardware and software regardless of whether this warranty period for any piece of hardware or software shall extend beyond the term of the initial contract. The vendor shall also describe in detail services to be covered under the warranty and warranty response time after notification. The expectation is that 100% of the warranty service calls will be responded to within the timeframes specified in this RFP. The State will verify, on a sample basis, that the timeframes are being met.
- 3) <u>User Acceptance Testing</u>: The State of North Carolina counties that acquire voting systems or their components under this Agreement shall be responsible for conducting user acceptance testing on those systems and components after the vendor delivers them to the respective counties' designated facilities. The user acceptance tests will verify that the delivered system and components meet the business and technical requirements stated in this Agreement The respective receiving county shall complete acceptance testing for each voting system, all related equipment, and vendor provided and recommended software within 30 days after receipt of each shipment. The vendor shall provide assistance to the receiving county in carrying out the acceptance testing procedures to the extent the receiving county so requests, provided the receiving county notifies the vendor at least 30 days in advance of scheduled testing. A receiving county must notify the vendor in writing when that receiving county completes acceptance testing. The receiving county must identify and notify in writing any functions that have not performed correctly. The vendor must repair or replace any unaccepted or defective component within 15 working days after this notification. The receiving county must test the corrections within 10 working days of receipt from the vendor. The failure of the receiving county to notify the vendor of non-acceptance of replacement or repaired components within such 10 working day period shall be deemed acceptance by the receiving county.
- 4) Maintenance Requirements: The vendor must offer at least four (4) additional years of maintenance for use after the initial warranty period expires. The State may elect to receive approved provider's then-current maintenance service upon payment of applicable maintenance fees, beginning at the end of the warranty period. Maintenance services may be renewed upon written notice by the State or county prior to the contract anniversary date. Escalation of maintenance fees shall not exceed 5% per year. Any maintenance agreements shall be subject to the terms of this contract.

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5) Financial Statements:

a) **Total Annual Revenue:** See requirement 8 a.

b) Annual Reports: See requirement 8 b

a) **Proposal Bond:** See requirement 5

- 6) Performance Bond or Letter of Credit: The vendor must agree to post a performance bond in the amount of \$7,500,000.00 or letter of credit to cover damages to the State Board of Elections and any county purchasing the vendor's system resulting from defects in the voting system. The bond or letter of credit shall also provide coverage for any municipality or other political body that is liable for the cost of the election to a county board of elections. Damages shall include, among other items, direct and indirect consequential damages resulting from a voting system defect and any costs of conducting a new election attributable to those defects.
 - a) The performance bond, which is due within ten (10) working days after the execution of the contract, must be made payable to North Carolina Office of Information Technology and must be in the form of a certified check, cashier's check, or a bond acquired from a surety company registered with the North Carolina Department of Insurance. The bond must remain in effect for the duration of the contract. The bond shall be for the benefit of the North Carolina State Board of Elections, any county purchasing the voting system of the vendor bonded, and for any municipality or other political body that is liable for the cost of the election to a county board of elections. Notwithstanding any other provisions relating to the beginning of the term, the contract shall not become effective until the Performance bond required by the contract is delivered in the correct form and amount to ITS.
 - b) The bond must be duly executed by a reputable surety company reasonably satisfactory to the ITS department. The vendor shall pay all premiums and related costs for securing and delivering the performance bond. The vendor and the surety must sign the bond. The bond will be issued by an insurance company that is either an North Carolina Admitted Surety or a current Treasury Listed Surety (Federal Register) and is either a current A.M. Best A IV rated surety or has a current Standard and Poor's rating of A.
 - c) The performance bond must be in effect, and cover damage claims, as long as the vendor's voting systems are installed in the State of North Carolina. The bond shall provide that it cannot be cancelled by the bonding company for any reason except upon 30 days written notice to the Statewide IT Procurement Office of the bonding company's intent to cancel. If the bonding company gives this notice, the vendor must immediately, and in no event later than 15 days after this notice, provide a replacement bond acceptable to the Statewide IT Procurement Office.
 - d) A letter of credit (1) must make the State, the county purchasing the voting system, and/or a political body responsible for the costs of an election run by the purchasing county the beneficiary, (2) as to any assets pledged to support the letter of credit, they may not be pledged or otherwise encumbered to any other beneficiary without the consent of the State and all counties purchasing the vendor's systems up to that time, (3) that the assets supporting the letter of credit, have to be liquid and consist of something other than shares in the vendor company unless express permission of the State allows otherwise, and (4) the assets must be pledged for the life of the contract which shall be effective and shall not cease to exist until all installed systems of the vendor are not longer in use. The vendor is free to request a reduction in the amount of the required letter of credit, and such reduction shall be in the sole discretion of the State which is free to place such conditions upon the reduction, including, but not limited to increasing the reduced amount of the line of credit upon an increase of the numbers of counties purchasing the vendor's system after an allowed reduction.

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e) The vendor's failure to satisfy the performance bond or letter of credit requirements specified in this section during the term of this Agreement may be deemed a material breach of this Agreement.

Section VII: Proposal Content and Organization

- 1) This section should contain all relevant and material information relating to the vendor's organization, personnel, and experience that would substantiate its qualifications and capabilities to perform the services and/or provide the goods described in this RFP. If any relevant and material information is not provided, the offer may be rejected from consideration and evaluation. Proposals will be considered and evaluated based upon the vendor's full completion and response to the following, and any additional requirements herein, or stated in a separate Exhibit.
- 2) Information and Descriptive Literature. Vendor must furnish all information requested; and if response spaces are provided in this document, the vendor shall furnish said information in the spaces provided. Further, if required elsewhere in this proposal, each vendor must submit with their proposal sketches, descriptive literature and/or complete specifications covering the products offered. References to literature submitted with a previous proposal will not satisfy this provision. Proposals that do not comply with these requirements may be rejected.
- 3) Proposal Content. Demonstrate compliance with all mandatory conditions, requirements and terms of performance.
 - a) Clearly state your understanding of this RFP.
 - i) Response to mandatory and desired technical specifications
 - ii) Cost proposal
 - b) Detailed description of vendor's firm must include all of the following:
 - i) Full name, Federal Tax identification number, address, and telephone number of the organization;
 - ii) Date established:
 - iii) Background of firm;
 - iv) Ownership (public company, partnership, subsidiary, etc.);
 - v) If incorporated, state of incorporation must be included.
 - vi) Number of full-time employees on January 1st for the last three years or for the duration vendor's firm has been in business, whichever is less.
- 4) Any errata or exceptions must be stated on a separate page, labeled "Errata and/or Exceptions" with references to the corresponding terms or provisions of the Solicitation.
- 5) Proposal Format. The proposals should be organized in the exact order in which the requirements and/or desirable performance criteria are presented in the RFP. The Execution page of this RFP must be placed at the front of the Proposal. All proposals should be typewritten on standard 8 ½ x 11 paper (larger paper is permissible for charts, spreadsheets, etc.) and placed within a binder with tabs delineating each section. Each page should be numbered. The proposal should contain a table of contents, which cross-references the RFP requirement and the specific page of the response in the vendor's proposal.
- 6) Vendors are strongly encouraged to adhere to the following general instructions in order to bring clarity and order to the proposal and subsequent evaluation process:
 - a) Elaborate proposals in the form of brochures or other presentations beyond that necessary to present a complete and effective proposal are not desired.
 - b) The response should be complete and comprehensive with a corresponding emphasis on being concise and clear.
- 7) Proposal Organization: The proposal should be organized and indexed in the following format and should contain, at a minimum, all listed items in the sequence indicated.

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- a) Letter of Transmittal Each proposal must be accompanied by a letter of transmittal that provides the following information:
 - i) Identify the submitting organization;
 - ii) Identify the name, title, telephone and fax numbers, and e-mail address of the person authorized by the organization to contractually obligate the organization;
 - iii) Identify the name, title, telephone and fax numbers, and e-mail address of the person authorized to negotiate the contract on behalf of the organization;
 - iv) Identify the names, titles, telephone and fax numbers, and e-mail addresses of persons to be contacted for clarification;
 - v) Acknowledge receipt of any and all amendments to this RFP.
- b) Cost Response Form
- c) Letter of Support from Manufacturer
- d) Table of Contents
- e) Proposal Summary. A proposal summary may be included by vendors to provide the Evaluation Committee with an overview of the technical and business features of the proposal; however, this material will not be used in the evaluation process unless specifically referenced from other portions of the vendor's proposal
- f) Response to Technical Specifications
- g) Response to Business Specifications
- h) Errata and Exceptions, if any
- i) Copy of vendor's Maintenance Agreements
- j) Other Supporting Material Including Technical System Documentation
- k) Training and Other Materials, Samples or Examples
- l) Within each section of their proposal, vendors should address the items in the order in which they appear in this RFP. Forms, if any, provided in the RFP must be thoroughly completed and included in the appropriate section of the proposal. All discussion of proposed costs, rates, or expenses must be presented with the cost response.
- 8) Any proposal that does not adhere to these requirements may be deemed non-responsive and rejected on that basis.
- 9) Vendors may attach other materials that they feel may improve the quality of their responses. However, these materials should be included as items in a separate appendix.

The following Sections (VIII and IX) represent the State of North Carolina's General Terms and Conditions for Information Technology products and services and the State of North Carolina's Supplemental Terms and Conditions for Software and Services. If any term and/or condition is specifically included in the RFP in other sections, then the previous inclusion shall take precedent.

Section VIII: Contractual Terms and Conditions

Definitions: As used herein:

<u>State</u> shall mean the State of North Carolina, the Office of Information Technology Services as an Agency or in its capacity as the Award Authority.

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<u>County</u> shall mean any North Carolina county who purchases products through a contract resulting from this RFP, or incorporates this RFP or the resulting contract from this RFP into a separate contract with a vendor.

Purchasing State Agency or Agency shall mean the Agency purchasing the goods or services.

- 1) Standards: Manufactured items and/or fabricated assemblies comprising Deliverables shall meet all requirements of the Occupational Safety and Health Act (OSHA), and State and federal requirements relating to clean air and water pollution, if applicable. Vendor will provide and maintain a quality assurance system or program that includes any Deliverables and will tender to the State only those Deliverables that have been inspected and found to conform to the requirements of this Contract. All manufactured items and/or fabricated assemblies comprising Deliverables are subject to operation, certification or inspection, and accessibility requirements as required:
- by State or federal Regulation,
- by State CIO policy or regulation, or
- acceptance with appropriate standards of operations or uses of said Deliverables as may be shown by identification markings or other means of the appropriate certifying standards organization.
 - a) Goods Return: Deliverables and any other goods or materials furnished by the vendor to fulfill technical requirements shall be in good working order and be maintained in good working order by vendor for the duration of the Contract; unless otherwise provided in a separate maintenance agreement or in the Solicitation Documents. Deliverables failing to meet the State's technical requirements shall be considered non-conforming goods and subject to return to the vendor for replacement at the State's option, and at the vendor's expense. The State or a county is responsible for the return costs related to the termination of a Contract, including deinstallation, and freight to destinations within the Continental United States; except in the case of default by the vendor or delivery of non-conforming goods by vendor. Shipping or freight charges, if any, paid by the State or a county for non-conforming goods will be reimbursed to the State or a county.
 - b) **Specifications:** The apparent silence of the specifications as to any detail, or the apparent omission of detailed description concerning any point, shall be regarded as meaning that only the best commercial practice is to prevail and only material and workmanship of the first quality may be used. Upon any notice of noncompliance provided by the State or a county, Vendor shall supply proof of compliance with the specifications. Vendor must provide written notice of its intent to deliver alternate or substitute products, goods or Deliverables. Alternate or substitute products, goods or Deliverables may be accepted or rejected in the sole discretion of the State or county; and any such alternates or substitutes must be accompanied by vendor's certification and evidence satisfactory to the State or county that the function, characteristics, performance and endurance will be equal or superior to the original Deliverables specified.
- 2) **Warranties:** Vendor shall assign all applicable third party warranties for Deliverables to the Purchasing State Agency, the North Carolina State Board of Elections, or a purchasing county of the Deliverables involved.
- 3) **Personnel:** Vendor shall not substitute key personnel assigned to the performance of this Contract without prior written approval by the Agency Contract Administrator. Any desired substitution shall be noticed to the Agency's Contract Administrator accompanied by the names and references of vendor's recommended substitute personnel. The Agency will approve or disapprove the requested substitution in a timely manner. The Agency may, in its sole discretion, terminate the services of any person providing services under this Contract. Upon such termination, the Agency may request acceptable substitute personnel or terminate the contract services provided by such personnel.
- 4) **Subcontracting:** The vendor may subcontract the performance of required services with other vendors or third parties, or change subcontractors, only with the prior written consent of the contracting authority. Vendor shall provide the State and counties with complete copies of any agreements made by and between vendor and all subcontractors. The selected vendor remains solely responsible for the performance of its subcontractors. Subcontractors, if any, shall adhere to the same standards required of the selected vendor. Any contracts made by the vendor with a subcontractor shall include an affirmative statement that the State and counties are intended third parties beneficiary of the contract; that the subcontractor has no agreement with the State and counties; and that the State and counties shall be indemnified by the vendor for any claim presented by the subcontractor. Notwithstanding any other term herein, vendor shall timely exercise its contractual remedies against any non-performing subcontractor and, when appropriate, substitute another subcontractor.

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- 5) **Vendor's Representation:** Vendor warrants that qualified personnel will provide services in a professional manner. "Professional manner" means that the personnel performing the services will possess the skill and competence consistent with the prevailing business standards in the information technology industry. Vendor agrees that it will not enter any agreement with a third party that might abridge any rights of the State and counties under this Contract. Vendor will serve as the prime vendor under this Contract. Should the State or counties approve any subcontractor(s), the vendor shall be legally responsible for the performance and payment of the subcontractor(s). Names of any third party vendors or subcontractors of vendor may appear for purposes of convenience in Contract documents; and shall not limit vendor's obligations hereunder. Third party subcontractors, if approved, may serve as subcontractors to vendor. Vendor will retain executive representation for functional and technical expertise as needed in order to incorporate any work by third party subcontractor(s).
- Software License: (for internal embedded software, firmware and unless otherwise provided in the State's solicitation document, or in an attachment hereto): Deliverables comprising goods, equipment or products (hardware) may contain software for internal operation, or as embedded software or firmware that is generally not sold or licensed as a severable software product. Software may be provided on separate media, such as floppy diskettes or CD-ROM, or may be included within the hardware at or prior to delivery. Such software is proprietary, copyrighted, and may also contain valuable trade secrets and may be protected by patents. Vendor grants the State and counties a license to use the Code (or any replacement provided) on, or in conjunction with, only the Deliverables purchased, or with any system identified in the solicitation documents. The State and counties shall have a worldwide, nonexclusive, non-sublicensable license to use such software and/or documentation for its internal use. The State and counties may make and install copies of the software to support the authorized level of use. Provided, however that if the hardware is inoperable, the software may be copied for temporary use on other hardware. The State and counties shall promptly affix to any such copy the same proprietary and copyright notices affixed to the original. The State and counties may make one copy of the software for archival, back-up or disaster recovery purposes. The license set forth in this Paragraph shall terminate immediately upon the State's or a county's discontinuance of the use of the equipment on which the software is installed. The software may be transferred to another party only with the transfer of the hardware. If the hardware is transferred, the State or county shall i) destroy all software copies made by the State or county, ii) deliver the original or any replacement copies of the software to the transferee, and iii) notify the transferee that title and ownership of the software and the applicable patent, trademark, copyright, and other intellectual property rights shall remain with vendor, or vendor's licensors. The State or county shall not disassemble, decompile, reverse engineer, modify, or prepare derivative works of the embedded software, unless permitted under the solicitation documents.
- 7) Maintenance/Support Services: Unless otherwise provided in the State's solicitation document, or in an attachment hereto, for the first year and all subsequent Contract years, Vendor agrees to provide the following services for the current version and one previous version of any Software provided with the Deliverables, commencing upon installation of the Deliverables or delivery of the Software:
 - a) Error Correction. Upon notice by State of a problem with the Software (which problem can be verified), Vendor shall use reasonable efforts to correct or provide a working solution for the problem. The State shall comply with all reasonable instructions or requests of Vendor in attempts to correct an error or defect in the Program. Vendor and the State shall act promptly and in a reasonably timely manner in communicating error or problem logs, other related information, proposed solutions or workarounds, and any action as may be necessary or proper to obtain or effect maintenance services under this Paragraph.
 - b) Vendor shall notify the State of any material errors or defects in the Deliverables known, or made known to Vendor from any source during the Contract term that could cause the production of inaccurate, or otherwise materially incorrect, results. Vendor shall initiate actions as may be commercially necessary or proper to effect corrections of any such errors or defects.
 - c) Updates. Vendor shall provide to the State, at no additional charge, all new releases and bug fixes (collectively referred to as "Changes") for any Software Deliverable developed or published by Vendor and made generally available to its other customers at no additional charge. All such Updates shall be a part of the Program and Documentation and, as such, be governed by the provisions of this Contract.
 - d) Telephone Assistance. Vendor shall provide the State with telephone access to technical support engineers for assistance in the proper installation and use of the Software, and to report and resolve Software problems, during

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normal business hours, 6:00 AM - 6:00 PM Eastern Time, Monday-Friday. Vendor shall respond to the telephone requests for Program maintenance service, within four hours, for calls made at any time.

- 8) Governmental Restrictions: In the event any restrictions are imposed by governmental requirements that necessitate alteration of the material, quality, workmanship, or performance of the Deliverables offered prior to delivery thereof, the vendor shall provide written notification of the necessary alteration(s) to the Agency Contract Administrator. The State reserves the right to accept any such alterations, including any price adjustments occasioned thereby, or to cancel the Contract. The State may advise vendor of any restrictions or changes in specifications required by North Carolina legislation, rule or regulatory authority that require compliance by the State. In such event, vendor shall use its best efforts to comply with the required restrictions or changes. If compliance cannot be achieved by the date specified by the State, the State may terminate this Contract and the State or a county shall compensate vendor for sums due under the Contract.
- 9) **Prohibition Against Contingent Fees and Gratuities:** Vendor warrants that it has not paid, and agrees not to pay, any bonus, commission, fee, or gratuity to any employee or official of the State or a county for the purpose of obtaining any contract or award issued by the State or a county. Vendor further warrants that no commission or other payment has been or will be received from or paid to any third party contingent on the award of any contract by the State or a county, except as shall have been expressly communicated to the State Purchasing Agent in writing prior to acceptance of the Contract or award in question. Each individual signing below warrants that he or she is duly authorized by their respective Party to sign this Contract and bind the Party to the terms and conditions of this Contract. Vendor and their authorized signatory further warrant that no officer or employee of the State or a county has any direct or indirect financial or personal beneficial interest, in the subject matter of this Contract; obligation or contract for future award of compensation as an inducement or consideration for making this Contract. Subsequent discovery by the State of non-compliance with these provisions shall constitute sufficient cause for immediate termination of all outstanding contracts. Violations of this provision may result in debarment of the vendor(s) or vendor(s) as permitted by 9 NCAC 06B.1009(f), 06B.1030, or other provision of law.
- 10) Availability of Funds: Any and all payments to vendor are expressly contingent upon and subject to the appropriation, allocation and availability of funds to the Agency, State Board of Elections, and counties for the purposes set forth in this Contract. If this Contract or any Purchase Order issued hereunder is funded in whole or in part by federal funds, the Agency's performance and payment shall be subject to and contingent upon the continuing availability of said federal funds for the purposes of the Contract or Purchase Order. If the term of this Contract extends into fiscal years subsequent to that in which it is approved, such continuation of the Contract is expressly contingent upon the appropriation, allocation and availability of funds by the State or a county for the purposes set forth in the Contract. If funds to effect payment are not available, the Agency, State Board of Elections and counties will provide written notification to vendor. If the Contract is terminated under this paragraph, vendor agrees to take back any affected Deliverables and software not yet delivered under this Contract, terminate any services supplied to the Agency, the State Board of Elections, and counties under this Contract, and relieve the Agency, the State Board of Elections, and counties of any further obligation thereof. The State and counties shall remit payment for Deliverables and services accepted prior to the date of the aforesaid notice in conformance with the payment terms.
- 11) **Payment Terms:** Payment terms are Net 30 days after receipt of correct invoice or acceptance of the Deliverables, whichever is later; unless a period of more than 30 days is required by the Agency, the State Board of Elections, or counties. The county government contracting with the vendor is responsible for all payments under the contract entered into by said county with the vendor.
- 12) Acceptance Criteria: In the event acceptance of Deliverables is not described in additional Contract documents, the State shall have the obligation to notify Vendor, in writing ten calendar days following installation of any Deliverable described in the Contract if it is not acceptable. The notice shall specify in reasonable detail the reason(s) a deliverable is unacceptable. Acceptance by the State shall not be unreasonably withheld; but may be conditioned or delayed as required for installation and/or testing of Deliverables. Final acceptance is expressly conditioned upon completion of all applicable inspection and testing procedures. Should the Deliverables fail to meet any specifications or acceptance criteria the State may exercise any and all rights hereunder, including such rights provided by the Uniform Commercial Code as adopted in North Carolina. Deliverables discovered to be defective or failing to conform to the specifications may be rejected upon initial inspection or at any later time if the defects contained in the Deliverables or non-compliance with the specifications was not reasonably ascertainable upon initial inspection. If the

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Vendor fails to promptly cure the defect or replace the Deliverables, the State reserves the right to cancel the Purchase Order, contract with a different Vendor, and to invoice the original Vendor for any differential in price over the original Contract price. When Deliverables are rejected, the Vendor must remove the rejected Deliverables from the premises of the State Agency within seven (7) calendar days of notification, unless otherwise agreed by the State Agency. Rejected items may be regarded as abandoned if not removed by Vendor as provided herein.

- 13) **Equal Employment Opportunity:** Vendor shall comply with all Federal and State requirements concerning fair employment and employment of the disabled, and concerning the treatment of all employees without regard to discrimination by reason of race, color, religion, sex, national origin or physical disability.
- 14) **Advertising/Press Release:** The vendor absolutely shall not publicly disseminate any information concerning the Contract without prior written approval from the State or its Agent. For the purpose of this provision of the Contract, the Agent is the Purchasing Agency Contract Administrator unless otherwise named in the solicitation documents.
- 15) Confidentiality: In accordance with 9 NCAC 06B.0207 and 06B.1001 and to promote maximum competition in the State competitive bidding process, the State and counties may maintain the confidentiality of certain types of information described in N.C. Gen. Stat. §132-1 et. seq. Such information may include trade secrets defined by N.C. Gen. Stat. §66-152 and other information exempted from the Public Records Act pursuant to N.C. Gen. Stat. §132-1.2. Vendor may designate appropriate portions of its response as confidential, consistent with and to the extent permitted under the Statutes and Rules set forth above, by marking the top and bottom of pages containing confidential information with a legend in boldface type "CONFIDENTIAL". By so marking any page, the vendor warrants that it has formed a good faith opinion, having received such necessary or proper review by counsel and other knowledgeable advisors that the portions marked confidential meet the requirements of the Rules and Statutes set forth above. However, under no circumstances shall price information be designated as confidential. The State and counties may serve as custodian of vendor's confidential information and not as an arbiter of claims against vendor's assertion of confidentiality. If an action is brought pursuant to N.C. Gen. Stat. §132-9 to compel the State or a county to disclose information marked confidential, the vendor agrees that it will intervene in the action through its counsel and participate in defending the State or a county, including any public official(s) or public employee(s). The vendor agrees that it shall hold the State or a county and any official(s) and individual(s) harmless from any and all damages, costs, and attorneys' fees awarded against the State in the action. The State or a county agrees to promptly notify the vendor in writing of any action seeking to compel the disclosure of vendor's confidential information. The State or a county shall have the right, at its option and expense, to participate in the defense of the action through its counsel. The State or a county shall have no liability to vendor with respect to the disclosure of vendor's confidential information ordered by a court of competent jurisdiction pursuant to N.C. Gen. Stat. §132-9 or other applicable law.
 - a) Care of Information: Vendor agrees to use commercial best efforts to safeguard and protect any data, documents, files, and other materials received from the State, a county or the Agency during performance of any contractual obligation from loss, destruction or erasure.
 - b) Vendor warrants that all its employees and any approved third party vendors or subcontractors are subject to a non-disclosure and confidentiality agreement enforceable in North Carolina. Vendor will, upon request of the State or a county, verify and produce true copies of any such agreements. Production of such agreements by vendor may be made subject to applicable confidentiality, non-disclosure or privacy laws; provided that vendor produces satisfactory evidence supporting exclusion of such agreements from disclosure under the N.C. Public Records laws in NCGS §132-1 et. seq. The State or county may, in its sole discretion, provide a non-disclosure and confidentiality agreement satisfactory to the State or county for vendor's execution. The State or county may exercise its rights under this subparagraph as necessary or proper, in its discretion, to comply with applicable security regulations or statutes including, but not limited to 26 USC 6103 and IRS Publication 1075, (Tax Information Security Guidelines for Federal, State, and Local Agencies), HIPAA, 42 USC 1320(d) (Health Information Portability and Accountability Act), any implementing regulations in the Code of Federal Regulations, the North Carolina General Statutes, the North Carolina Administrative Code (NCAC), and any future regulations imposed upon the Office of Information Technology Services or the N.C. Department of Revenue pursuant to future statutory or regulatory requirements.
 - c) Nondisclosure: vendor agrees and specifically warrants that it, its officers, directors, principals and employees, and any subcontractors, shall hold all information received during performance of this Contract in the strictest confidence and shall not disclose the same to any third party without the express written approval of the State.

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- 16) **Deliverables:** Deliverables, as used herein, shall comprise all project materials, including goods, software, data, and documentation created during the performance or provision of services hereunder. Deliverables are the property of the State of North Carolina or county and must be kept confidential or returned to the Agency, to ITS procurement, or destroyed as required by the State or county. Proprietary vendor materials licensed to the State or a county shall be identified to the State or county by vendor prior to use or provision of services hereunder and shall remain the property of the vendor. Embedded software or firmware shall not be a severable Deliverable. The State's solicitation document may supplement or substitute this definition and the requirements set forth in this Paragraph. Deliverables include "Work Product" and means any expression of Licensor's findings, analyses, conclusions, opinions, recommendations, ideas, techniques, know-how, designs, programs, enhancements, and other technical information; but not source and object code or software. All Software source and object code is the property of Licensor and is licensed nonexclusively to the State or county, at no additional license fee, pursuant to the terms of the software license contained herein, and in the Supplemental Terms and Conditions for Software and Services or the License Agreement if incorporated in the Solicitation Documents.
- 17) **Late Delivery, Back Order:** Vendor shall advise the Agency contact person or office immediately upon determining that any Deliverable will not, or may not, be delivered at the time or place specified. Together with such notice, Vendor shall state the projected delivery time and date. In the event the delay projected by Vendor is unsatisfactory, the Agency shall so advise Vendor and may proceed to procure substitute Deliverables or services.

18) Patent, Copyright, and Trade Secret Protection:

- a) Vendor has created, acquired or otherwise has rights in, and may, in connection with the performance of services for the State or county, employ, provide, create, acquire or otherwise obtain rights in various concepts, ideas, methods, methodologies, procedures, processes, know-how, techniques, models, templates and general purpose consulting and software tools, utilities and routines (collectively, the "Vendor Technology"). To the extent that any vendor Technology is contained in any of the Deliverables including any derivative works, the vendor hereby grants the State or county a royalty-free, fully paid, worldwide, perpetual, non-exclusive license to use such Vendor Technology in connection with the Deliverables for the State's or county's purposes.
- b) Vendor shall not acquire any right, title and interest in and to the copyrights for goods, any and all software, technical information, specifications, drawings, records, documentation, data or derivative works thereof, or other work products provided by the State or county to vendor. The State or county hereby grants vendor a royalty-free, fully paid, worldwide, perpetual, non-exclusive license for vendor's internal use to non-confidential Deliverables first originated and prepared by the vendor for delivery to the State or county.
- c) The vendor, at its own expense, shall defend any action brought against the State or county to the extent that such action is based upon a claim that the services or Deliverables supplied by the vendor, or the operation of such Deliverables pursuant to a current version of vendor-supplied software, infringes a United States patent, or copyright or violates a trade secret. The vendor shall pay those costs and damages finally awarded against the State or county in any such action. Such defense and payment shall be conditioned on the following:
 - i. That the vendor shall be notified within a reasonable time in writing by the State or county of any such claim; and,
 - ii. That the vendor shall have the sole control of the defense of any action on such claim and all negotiations for its settlement or compromise, provided, however, that the State or county shall have the option to participate in such action at its own expense.
- d) Should any services or software supplied by vendor, or the operation thereof become, or in the vendor's opinion are likely to become, the subject of a claim of infringement of a United States patent, copyright, or a trade secret, the State or county shall permit the vendor, at its option and expense, either to procure for the State or county the right to continue using the goods/hardware or software, or to replace or modify the same to become noninfringing and continue to meet procurement specifications in all material respects. If neither of these options can reasonably be taken, or if the use of such goods/hardware or software by the State or county shall be prevented by injunction, the vendor agrees to take back such goods/hardware or software, and refund any sums the State or county has paid vendor less any reasonable amount for use or damage and make every reasonable effort to assist the State or county in procuring substitute Deliverables. If, in the sole opinion of the State or county, the return of such infringing Deliverables makes the retention of other items of Deliverables acquired from the vendor under this Contract impractical, the State or county shall then have the option of terminating the Contract, or applicable

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portions thereof, without penalty or termination charge. The vendor agrees to take back such Deliverables and refund any sums the State or county has paid vendor less any reasonable amount for use or damage.

- e) Vendor will not be required to defend or indemnify the State or county if any claim by a third party against the State or county for infringement or misappropriation (i) results from the State's or county's alteration of any vendor-branded product or Deliverable, or (ii) results from the continued use of the good(s) or Services and Deliverables after receiving notice they infringe a trade secret of a third party.
- f) Nothing stated herein, however, shall affect vendor's ownership in or rights to its preexisting intellectual property and proprietary rights.
- 16) Access to Persons and Records: Pursuant to N.C. General Statute 147-64.7, the Agency, State, the county, the State Auditor, appropriate federal state, and county officials, and their respective authorized employees or agents are authorized to examine all books, records, and accounts of the vendor insofar as they relate to transactions with any department, board, officer, commission, institution, other Agency of the State of North Carolina, or county pursuant to the performance of this Contract or to costs charged to this Contract. The vendor shall retain any such books, records, and accounts for a minimum of three (3) years after the completion of this Contract. Additional audit or reporting requirements may be required by any Agency, if in the Agency's opinion, such requirement is imposed by federal or state law or regulation.
- 17) **Assignment:** Vendor may not assign this Contract or its obligations hereunder except as permitted by 09 NCAC 06B.1003 and this Paragraph. Vendor shall provide reasonable notice of not less than thirty (30) days prior to any consolidation, acquisition, or merger. Any assignee shall affirm this Contract adhering to the terms and conditions agreed, and that vendor shall affirm that the assignee is fully capable of performing all obligations of vendor under this Contract. An assignment may be made, if at all, in writing by the vendor, Assignee and the State or county setting forth the foregoing obligation of vendor and Assignee.
- 18) **Insurance Coverage:** During the term of the Contract, the vendor at its sole cost and expense shall provide commercial insurance of such type and with such terms and limits as may be reasonably associated with the Contract. As a minimum, the vendor shall provide and maintain the following coverage and limits:
 - a) Worker's Compensation The vendor shall provide and maintain Worker's Compensation Insurance, as required by the laws of North Carolina, as well as employer's liability coverage with minimum limits of \$100,000.00, covering all of vendor's employees who are engaged in any work under the Contract. If any work is sublet, the vendor shall require the subcontractor to provide the same coverage for any of his employees engaged in any work under the Contract; and
 - b) <u>Commercial General Liability</u> General Liability Coverage on a Comprehensive Broad Form on an occurrence basis in the minimum amount of \$2,000,000.00 Combined Single Limit (Defense cost shall be in excess of the limit of liability); and
 - c) <u>Automobile</u> Automobile Liability Insurance, to include liability coverage, covering all owned, hired and non-owned vehicles, used in connection with the Contract. The minimum combined single limit shall be \$500,000.00 bodily injury and property damage; \$500,000.00 uninsured/under insured motorist; and \$5,000.00 medical payment; and
 - d) Providing and maintaining adequate insurance coverage described herein is a material obligation of the vendor and is of the essence of this Contract. All such insurance shall meet all laws of the State of North Carolina. Such insurance coverage shall be obtained from companies that are authorized to provide such coverage and that are authorized by the Commissioner of Insurance to do business in North Carolina. The vendor shall at all times comply with the terms of such insurance policies, and all requirements of the insurer under any such insurance policies, except as they may conflict with existing North Carolina laws or this Contract. The limits of coverage under each insurance policy maintained by the vendor shall not be interpreted as limiting the vendor's liability and obligations under the Contract.
- 19) **Dispute Resolution:** The parties agree that it is in their mutual interest to resolve disputes informally. A claim by the vendor shall be submitted in writing to the Agency Contract Administrator for decision. A claim by the State or a county shall be submitted in writing to the vendor's Contract Administrator for decision. The Parties shall negotiate in good faith and use all reasonable efforts to resolve such dispute(s). During the time the Parties are attempting to resolve any dispute, each shall proceed diligently to perform their respective duties and responsibilities under this Contract. If a dispute cannot be resolved between the Parties within thirty (30) days after delivery of notice, either

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Party may elect to exercise any other remedies available under this Contract, or at law. This term shall not constitute an agreement by either party to mediate or arbitrate any dispute.

- 20) **Default:** In the event any Deliverable furnished by the vendor during performance of any Contract term fails to conform to any material requirement of the Contract specifications, notice of the failure is provided by the State and the failure is not cured within ten (10) days, or vendor fails to meet the requirements of Paragraph 13) herein, the State or county may cancel and procure the articles or services from other sources; holding vendor liable for any excess costs occasioned thereby, subject only to the limitations provided in Paragraphs 28) and 29) and the obligation to informally resolve disputes as provided in Paragraph 24) of these Terms and Conditions. Default may be cause for debarment as provided in 09 NCAC 06B.1030. The State or county reserves the right to require performance guaranties pursuant to 09 NCAC 06B.1031 from the vendor without expense to the State or county. The rights and remedies of the State or county provided above shall not be exclusive and are in addition to any other rights and remedies provided by law or under the Contract.
 - a) If vendor fails to deliver Deliverables within the time required by this Contract, the State or county may provide written notice of said failure to vendor, and by such notice require payment of a penalty.
 - b) Should the State or county fail to perform any of its obligations upon which vendor's performance is conditioned, vendor shall not be in default for any delay, cost increase or other consequences due to the State's or county's failure. Vendor will use reasonable efforts to mitigate delays, costs or expenses arising from assumptions in the vendor's bid documents that prove erroneous or are otherwise invalid. Any deadline that is affected by any such failure in assumptions or performance by the State or county shall be extended by an amount of time reasonably necessary to compensate for the effect of such failure.
 - c) Vendor shall provide a plan to cure any default if requested by the State or county. The plan shall state the nature of the default, the time required for cure, any mitigating factors causing or tending to cause the default, and such other information as the vendor may deem necessary or proper to provide.
- 21) **Waiver of Default:** Waiver by either party of any default or breach by the other Party shall not be deemed a waiver or any subsequent default or breach and shall not be construed to be a modification or novation of the terms of this Contract, unless so stated in a writing and signed by authorized representatives of the Agency and the vendor, and made as an amendment to this Contract pursuant to Paragraph 30)b) herein below.
- 22) **Termination:** Any notice or termination made under this Contract shall be transmitted via US Mail, Certified Return Receipt Requested. The period of notice for termination shall begin on the day the return receipt is signed and dated.
 - a) The parties may mutually terminate this Contract by written agreement at any time.
 - b) The State may terminate this Contract, in whole or in part, pursuant to Paragraph 25), or pursuant to the Special Terms and Conditions in the Solicitation Documents, if any, or for any of the following:
 - i. Termination for Cause: In the event any goods, software, or service furnished by the vendor during performance of any Contract term fails to conform to any material requirement of the Contract, and the failure is not cured within the specified time after providing written notice thereof to vendor, the State or county may cancel and procure the articles or services from other sources; holding vendor liable for any excess costs occasioned thereby, subject only to the limitations provided in Paragraphs 28) and 29) herein. The rights and remedies of the State or county provided above shall not be exclusive and are in addition to any other rights and remedies provided by law or under the Contract. Vendor shall not be relieved of liability to the State or county for damages sustained by the State or county arising from vendor's breach of this Contract; and the State or county may, in its discretion, withhold any payment due as a setoff until such time as the damages are finally determined or as agreed by the parties. Voluntary or involuntary Bankruptcy or receivership by vendor shall be cause for termination.
 - ii. ii) <u>Termination For Convenience Without Cause</u>: The State or county may terminate service and indefinite quantity contracts, in whole or in part by giving 30 days prior notice in writing to the vendor. Vendor shall be entitled to sums due as compensation for Deliverables provided and services performed in conformance with the Contract. In the event the Contract is terminated for the convenience of the State or county the Agency, State, or county will pay for all work performed and products delivered in conformance with the Contract up to the date of termination.

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23) Limitation of Vendor's Liability:

- a) Where Deliverables are under the State's or county's exclusive management and control, the vendor shall not be liable for direct damages caused by the State's or county's failure to fulfill any State or county responsibilities of assuring the proper use, management and supervision of the Deliverables and programs, audit controls, operating methods, office procedures, or for establishing all proper checkpoints necessary for the State's or county's intended use of the Deliverables.
- b) The vendor's liability for damages to the State or county for any cause whatsoever, and regardless of the form of action, whether in contract or in tort, shall be limited to two times the value of the Contract. Provided, however, that the State's Solicitation Documents or the Supplemental Terms and Conditions for Software or Services, if any, may increase vendor's maximum liability for damages, but in no event shall the liability for damages be less than the total value of the Contract.
- c) The foregoing limitation of liability shall not apply to the payment of costs and damage awards referred to in the Paragraph entitled "Patent, Copyright, and Trade Secret Protection", to claims covered by other specific provisions calling for liquidated damages or specifying a different limit of liability, or to claims for injury to persons or damage to property caused by vendor's negligence or willful or wanton conduct. This limitation of liability does not apply to the receipt of court costs or attorney's fees that might be awarded by a court in addition to damages after litigation based on this Contract.

24) Vendor's Liability for Injury to Persons or Damage to Property:

- a) The vendor shall be liable for damages arising out of personal injuries and/or damage to real or tangible personal property of the State or county, employees of the State or county, persons designated by the State or county for training, or person(s) other than agents or employees of the vendor, designated by the State or county for any purpose, prior to, during, or subsequent to delivery, installation, acceptance, and use of the Deliverables either at the vendor's site or at the State's or county's place of business, provided that the injury or damage was caused by the fault or negligence of the vendor.
- b) The vendor agrees to indemnify, defend and hold the Agency, State and the county and its Officers, employees, agents and assigns harmless from any liability relating to personal injury or injury to real or personal property of any kind, accruing or resulting to any other person, firm or corporation furnishing or supplying work, services, materials or supplies in connection with the performance of this contract, whether tangible or intangible, arising out of the ordinary negligence, willful or wanton negligence, or intentional acts of the vendor, its officers, employees, agents, assigns or subcontractors, in the performance of this Contract.
- c) Vendor shall not be liable for damages arising out of or caused by an alteration or an attachment not made or installed by the vendor, or for damage to alterations or attachments that may result from the normal operation and maintenance of the vendor's goods.
- 25) **General Indemnity:** The vendor shall hold and save the State or county, its officers, agents and employees, harmless from liability of any kind, including all claims and losses, with the exception of consequential damages, accruing or resulting to any other person, firm or corporation furnishing or supplying work, services, materials or supplies in connection with the performance of this Contract. The foregoing indemnification and defense by the vendor shall be conditioned upon the following:
 - a) The Agency, State, or county shall give vendor written notice within thirty (30) days after it has actual knowledge of any such claim(s) or action(s) filed; and
 - b) The vendor shall have the sole control of the defense of any such claim(s) or action(s) filed and of all negotiations relating to settlement or compromise thereof, provided, however, that the Agency, State, or county shall have the option to participate at their own expense in the defense of such claim(s) or action(s) filed.
- 26) **Changes:** This Contract and subsequent purchase order(s) is awarded subject to shipment of quantities, qualities, and prices indicated by the order or Contract, and all conditions and instructions of the Contract or proposal on which it is based. Any changes made to this Contract or purchase order proposed by the Vendor are hereby rejected unless accepted in writing by the Agency or State Award Authority. The State shall not be responsible for Deliverables or services delivered without a purchase order from the Agency or State Award Authority.
- 27) **Price Adjustments For Term Contracts:** Changes in prices or costs quoted by Vendor may be permitted during the term of the Contract, but shall be subject to the requirements of this Paragraph, and any additional terms of the

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solicitation document. Permitted changes during the Contract period must be general, either by reason of market change, change in manufacturer's list price or price adjustments authorized by Contract.

- a) Notification: Vendor must provide written notification of any proposed pricing change to the Office of Information Technology Services not less than sixty (60) days prior to the desired effective date of any proposed price adjustment. If Vendor is a reseller, MCL, VAR, or other party having a similar relationship with the manufacturer, the notification shall be accompanied by copy of manufacturer's official notice or other acceptable evidence that the price change is general in nature.
- b) Decreases: The State shall receive full proportionate benefit of any decrease immediately upon the effective date at any time during the Contract period.
- c) Increases: All prices and costs shall be firm against any increase for 180 days from the effective date of the Contract. After this period, a request for increase may be submitted with the State reserving the right to accept or reject the increase, or cancel the Contract. The State shall exercise this right not later than 30 days after the receipt by of a properly documented request for price increase. Any increases accepted shall become effective not earlier than 30 days after the expiration of the original 30 days reserved to evaluate the request for increase.
- 28) **Time is of the Essence.** Time is of the essence in the performance of this Contract.
- 29) **Date and Time Warranty:** The Vendor warrants that any Deliverable, whether hardware, firmware, middleware, custom or commercial software, or internal components, subroutines, and interface therein which performs any date and/or time data recognition function, calculation, or sequencing, will provide accurate date/time data and leap year calculations. This warranty shall survive termination or expiration of the Contract.
- 30) **Date and Time Warranty:** The vendor warrants that any Deliverable, whether hardware, firmware, middleware, custom or commercial software, or internal components, subroutines, and interface therein which performs any date and/or time data recognition function, calculation, or sequencing, will provide accurate date/time data and leap year calculations. This warranty shall survive termination or expiration of the Contract.
- 31) **Independent Contractors:** Vendor and its employees, officers and executives, and subcontractors, if any, shall be independent vendors and not employees or agents of the State or a county. This Contract shall not operate as a joint venture, partnership, trust, agency or any other business relationship.
- 32) **Transportation:** Transportation of Deliverables shall be FOB Destination; unless otherwise specified in the solicitation document or purchase order. Freight, handling, hazardous material charges, and distribution and installation charges shall be included in the total price of each item. Any additional charges shall not be honored for payment unless authorized in writing by the Purchasing State Agency or county. In cases where parties, other than the vendor ship materials against this order, the shipper must be instructed to show the purchase order number on all packages and shipping manifests to ensure proper identification and payment of invoices. A complete packing list must accompany each shipment.
- 33) **Notices**: Any notices required under this Contract should be delivered to the Contract Administrator for each party. Unless otherwise specified in the Solicitation Documents, any notices shall be delivered in writing by U.S. Mail, Commercial Courier or by hand.
- 34) **Titles and Headings:** Titles and Headings in this Contract are used for convenience only and do not define, limit or proscribe the language of terms identified by such Titles and Headings.
- 35) Amendment: This Contract may not be amended orally or by performance. Any amendment must be made in written form and signed by duly authorized representatives of the State and vendor in conformance with Paragraph 35) herein.
- 36) **Taxes:** The State of North Carolina and counties are exempt from Federal excise taxes and no payment will be made for any personal property taxes levied on the vendor or for any taxes levied on employee wages. Agencies of the State or counties may have additional exemptions or exclusions for federal, state or local taxes. Evidence of such additional exemptions or exclusions may be provided to vendor by Agencies, as applicable, during the term of this Contract. Applicable State or local sales taxes shall be invoiced as a separate item.

37) Governing Laws, Jurisdiction, and Venue:

a) This Contract is made under and shall be governed and construed in accordance with the laws of the State of North Carolina. The place of this Contract or purchase order, its situs and forum, shall be Wake County, North Carolina, where all matters, whether sounding in contract or in tort, relating to its validity, construction, interpretation and enforcement shall be determined. Vendor agrees and submits, solely for matters relating to this

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Contract, to the jurisdiction of the courts of the State of North Carolina, and stipulates that Wake County shall be the proper venue for all matters.

- b) Except to the extent the provisions of the Contract are clearly inconsistent therewith, the applicable provisions of the Uniform Commercial Code as modified and adopted in North Carolina shall govern this Contract. To the extent the Contract entails both the supply of "goods" and "services," such shall be deemed "goods" within the meaning of the Uniform Commercial Code, except when deeming such services as "goods" would result in a clearly unreasonable interpretation.
- 38) **Force Majeure:** Neither party shall be deemed to be in default of its obligations hereunder if and so long as it is prevented from performing such obligations as a result of events beyond its reasonable control, including without limitation, fire, power failures, any act of war, hostile foreign action, nuclear explosion, riot, strikes or failures or refusals to perform under subcontracts, civil insurrection, earthquake, hurricane, tornado, or other catastrophic natural event or act of God.
- 39) **Compliance with Laws:** The vendor shall comply with all laws, ordinances, codes, rules, regulations, and licensing requirements that are applicable to the conduct of its business, including those of federal, state, and local agencies having jurisdiction and/or authority.
- 40) **Severability:** In the event that a court of competent jurisdiction holds that a provision or requirement of this Contract violates any applicable law, each such provision or requirement shall be enforced only to the extent it is not in violation of law or is not otherwise unenforceable and all other provisions and requirements of this Contract shall remain in full force and effect. All promises, requirement, terms, conditions, provisions, representations, guarantees and warranties contained herein shall survive the expiration or termination date unless specifically provided otherwise herein, or unless superseded by applicable federal or State statute, including statutes of repose or limitation.
- 41) **Federal Intellectual Property Bankruptcy Protection Act:** The Parties agree that the Agency shall be entitled to all rights and benefits of the Federal Intellectual Property Bankruptcy Protection Act, Public Law 100-506, codified at 11 U.S.C. 365(n), and any amendments thereto.
- 42) **Electronic Procurement** (Applies to all contracts that include E-Procurement and are identified as such in the body of the solicitation document): Purchasing shall be conducted through the Statewide E-Procurement Service whenever possible. The State's third party agent shall serve as the Supplier Manager for this E-Procurement Service. The vendor shall register for the Statewide E-Procurement Service within two (2) business days of notification of award in order to receive an electronic purchase order resulting from award of this contract.
 - a) The successful vendor(s) shall pay a transaction fee of 1.75% (.0175) on the total dollar amount (excluding sales taxes) of each purchase order issued through the Statewide E-Procurement Service. This applies to all purchase orders, regardless of the quantity or dollar amount of the purchase order. The transaction fee shall neither be charged to nor paid by the State, or by any State approved users of the contract, including but not limited to counties purchasing under the contract. The transaction fee shall not be stated or included as a separate item in the proposed contract or invoice. There are no additional fees or charges to the vendor for the services rendered by the Supplier Manager under this contract. Vendor will receive a credit for transaction fees they paid for the purchase of any item(s) if an item(s) is returned through no fault of the vendor. Transaction fees are non-refundable when an item is rejected and returned, or declined, due to the vendor's failure to perform or comply with specifications or requirements of the contract.
 - b) Vendor, or its authorized Reseller, as applicable, will be invoiced monthly for the State's transaction fee by the Supplier Manager. The transaction fee shall be based on purchase orders issued for the prior month. Unless Supplier Manager receives written notice from the vendor identifying with specificity any errors in an invoice within thirty (30) days of the receipt of invoice, such invoice shall be deemed to be correct and vendor shall have waived its right to later dispute the accuracy and completeness of the invoice. Payment of the transaction fee by the vendor is due to the account designated by the State within thirty (30) days after receipt of the correct invoice for the transaction fee, which includes payment of all portions of an invoice not in dispute. Within thirty (30) days of the receipt of invoice, vendor may request in writing an extension of the invoice payment due date for that portion of the transaction fee invoice for which payment of the related goods by the governmental purchasing entity has not been received by the vendor. If payment of the transaction fee invoice is not received by the State within this payment period, it shall be considered a material breach of contract. The Supplier Manager shall

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provide, whenever reasonably requested by the vendor in writing (including electronic documents), supporting documentation from the E-Procurement Service that accounts for the amount of the invoice.

- The Supplier Manager will capture the order from the State approved user, including the shipping and payment information, and submit the order in accordance with the E-Procurement Service. Subsequently, the Supplier Manager will send those orders to the appropriate vendor on State Contract. The State or State approved user, not the Supplier Manager, shall be responsible for the solicitation, bids received, evaluation of bids received, award of contract, and the payment for goods delivered.
- d) Vendor agrees at all times to maintain the confidentiality of its user name and password for the Statewide E-Procurement Services. If a vendor is a corporation, partnership or other legal entity, then the vendor may authorize its employees to use its password. Vendor shall be responsible for all activity and all charges for such employees. Vendor agrees not to permit a third party to use the Statewide E-Procurement Services through its account. If there is a breach of security through the vendor's account, vendor shall immediately change its password and notify the Supplier Manager of the security breach by e-mail. Vendor shall cooperate with the state and the Supplier Manager to mitigate and correct any security breach.
- 43) **Electronic Procurement** (Applies only to Statewide Term Contracts): Within fifteen (15) calendar days of notice, the vendor shall provide supplier information, contract pricing and other product related information requested by the State or the Supplier Manager. This information shall include such information as vendor name, SKU, brand/manufacturer, product name and a brief description, unit of measure, price, and other similar information or properly requested by the State of the Supplier Manager to facilitate purchasing from the contract. This information shall be posted by the vendor in the format provided by the Supplier Manager, or as otherwise provided in a template or format required by the State. No costs or expenses associated with providing this information shall be charged to the State, its agents (including Supplier Manager) or State approved users of the contract including but not limited to counties purchasing under the contract. For the purposes of this contract, the vendor warrants that it is authorized and empowered to and hereby grants the State and the Supplier Manager the right and license to reproduce and display vendor's trademarks, service marks, logos, trade dress or other branding designation that identifies the goods available under the contract. The Supplier Manager shall create and maintain, with vendor's timely assistance, web-based placement of contract information, where appropriate, that includes the contract items distributed by the vendor within the appropriate contract categories. The State shall provide any price adjustment/product modification information that it has approved during the course of the contract, to the Supplier Manager immediately upon such change.
 - a) If the vendor is not the manufacturer, then it shall be the vendor's responsibility to obtain authorization from the manufacturer to comply with the provisions of this contract, including any appropriate intellectual property rights of the manufacturer. If the vendor is the manufacturer, then the manufacturer shall only authorize dealers, outlets, distributors, value added resellers, etc. (together, "Authorized Resellers") within their network that can comply with the provisions of this contract.
 - b) Vendor is and shall remain responsible for paying the transaction fee on behalf of its authorized reseller in the event that the authorized reseller defaults.

SECTION IX: North Carolina Office of Information Technology Supplemental Terms and Conditions for Software and Services

- 1) **Supplement:** The additional terms and conditions set forth herein shall supplement the General Terms and Conditions for Goods and Related Services. In the event of a conflict between this Supplement and the General Terms and Conditions, or any other document, the order of precedence shall be determined by the State's solicitation document(s).
- 2) License Grant: This paragraph recites the scope of license granted, if not superseded by a separate licensing agreement as follows:
 - a. Vendor grants to the State, its Agencies and lawful customers a non-exclusive, non-transferable and non-sublicensable license to use, in object code format, Vendor's software identified in the solicitation documents, Vendor's Statement of Work (SOW), or an Exhibit thereto executed by the parties

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("Software"), subject to the restrictions set forth therein, such as the authorized computer system, the data source type(s), the number of target instance(s) and the installation site. Use of the Software shall be limited to the data processing and computing needs of the State, its Agencies and lawful customers. This license shall be perpetual, unless terminated as provided herein. The State agrees not to distribute, sell, sublicense or otherwise transfer copies of the Software or any portion thereof. For purposes of this Agreement, a State Entity shall be defined as any department or agency of the State of North Carolina, which is controlled by or under common control of the State or who is a lawful customer of the State pursuant to Article 3D of Chapter 147 of the General Statutes.

- b. Vendor shall provide all encryption or identification codes or authorizations that are necessary or proper for the operation of the licensed Software.
- c. The State shall have the right to copy the Software, in whole or in part, for use in conducting benchmark or acceptance tests, for business recovery and disaster recovery testing or operations, for archival or emergency purposes, for back up purposes, for use in preparing derivative works if allowed by the solicitation documents or statements of work, or to replace a worn copy.
- d. The State may modify non-personal Software in machine-readable form for its internal use in merging the same with other software program material. Any action hereunder shall be subject to uses described in this paragraph, the restrictions imposed by Paragraph 2, and applicable terms in the solicitation documents or statements of work.
- 3) **Restrictions**. State's use of the Software is restricted as follows:
 - a. The license granted herein is granted to the State and to any political subdivision or other entity permitted or authorized to procure Information Technology through the Office of Information Technology. If the License Grant and License Fees are based upon the number of Users, the number of Users may be increased at any time, subject to the restrictions on the maximum number of Users specified in the solicitation documents.
 - b. No right is granted hereunder to use the Software to perform services for commercial third parties (so-called "service bureau" uses). Services provided to other State Departments, Agencies or political subdivisions of the State are permitted.
 - c. The State may not copy, distribute, reproduce, use, lease, rent or allow access to the Software except as explicitly permitted under this Agreement, and State will not modify, adapt, translate, prepare derivative works (unless allowed by the solicitation documents or statements of work,) decompile, reverse engineer, disassemble or otherwise attempt to derive source code from the Software or any internal data files generated by the Software.
 - d. State shall not remove, obscure or alter Vendor's copyright notice, trademarks, or other proprietary rights notices affixed to or contained within the Software.
- 4) Vendor's Retained Rights: Subject only to the rights granted to State hereunder, Vendor retains all right, title and interest in and to the Software and all copies of the Software, including without limitation all modifications, enhancements, upgrades and new versions with respect to any of the foregoing, all patent rights, copyrights and trade secret rights embodying any of the foregoing, and all know-how, concepts, inventions and ideas related to the foregoing. State shall provide Vendor with access to State's facilities, at reasonable times and upon reasonable notice, to verify State's compliance with the terms of this Agreement.
- 5) Support or Maintenance Services: This paragraph recites the scope of maintenance services due under the license granted, if not superseded by a separate licensing and maintenance agreement or as may be stated in the solicitation documents. Subject to payment of a Support Service or Maintenance Fee stated in the solicitation documents for the first year and all subsequent years, if requested by the State, Vendor agrees to provide the following support services ("Support Services") for the current version and one previous version of the Software commencing upon delivery of the Software:
 - a. **Error Correction:** If the error conditions reported by the State pursuant to the General Terms and Conditions are not corrected in a timely manner, the State may request a replacement copy of the licensed Software from Vendor. In such event, Vendor shall then deliver a replacement copy, together with corrections and updates, of the licensed Software within 24 hours of the State's request at no added expense to the State.

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b. **Other Agreement**: This Paragraph 5 may be superseded by agreement provided that:

- i. Support and maintenance services shall be fully described in a separate agreement annexed hereto and incorporated herein
- c. **Temporary Extension of License**: If any licensed Software or CPU/computing system on which the Software is installed fails to operate or malfunctions, the term of the license granted shall be temporarily extended to another CPU selected by the State and continue until the earlier of:
 - i. Return of the inoperative CPU to full operation, or
 - ii. Termination of the license.
- d. **Encryption Code:** Vendor shall provide any temporary encryption code or authorization necessary or proper for operation of the licensed Software under the foregoing temporary license. The State will provide notice by expedient means, whether by telephone, e-mail or facsimile of any failure under this paragraph. On receipt of such notice, Vendor shall issue any temporary encryption code or authorization to the State within 24 hours, unless otherwise agreed.
- e. **Updates.** Vendor shall provide to the State, at no additional charge, all new releases and bug fixes (collectively referred to as "Updates") for any Software Deliverable developed or published by Vendor and made generally available to its other customers at no additional charge. All such Updates shall be a part of the Program and Documentation and, as such, be governed by the provisions of this Contract.
- f. **Telephone Assistance.** Vendor shall provide the State with telephone access to technical support engineers for assistance in the proper installation and use of the Software, and to report and resolve Software problems, during normal business hours, 6:00 AM 6:00 PM Eastern Time, Monday-Friday. Vendor shall respond to the telephone requests for Program maintenance service, within four (4) hours, for calls made at any time.
- 6) Termination of Support or Maintenance: If the State fails to pay Support or Maintenance Services for the Software or choose not to pay for Support or Maintenance Services, the State may continue to use the Software pursuant to the license granted hereunder, but will not be entitled to receive routine Support Services for such Software. If the State does not subscribe or purchase Support or Maintenance Services effective with the date of this Contract, Support or Maintenance Services may be subsequently subscribed or purchased at any time during the term of this Contract by payment of Support Service or Maintenance Fees at Vendor's then current prices. During the term of this Agreement, the State may also purchase implementation services, consulting and training from Vendor at Vendor's then current prices.
- Program Retirement: Vendor retains the right to retire a version of the Program and stop providing Maintenance, Updates or Services, upon providing 180 day written notice to the State of its intent to do so. The decision to stop maintaining a version of the Program is the sole business discretion of Vendor and shall not be deemed a breach of contract. If Vendor retires the version of the Program provided to the State and if the State has paid all applicable annual Maintenance Fees subsequent to executing this Agreement, the State shall be entitled to receive, at no additional charge, a newer version of the Program that supports substantially the same functionality as the licensed version of the Program. Newer versions of the Program containing substantially increased functionality will be made available to the State for an additional fee.
- Applies if marked: **Services Provided by Vendor:** Vendor shall provide the State with implementation services as specified in a Statement of Work ("SOW") executed by the parties. This Agreement in combination with each SOW individually comprises a separate and independent contractual obligation from any other SOW. A breach by Vendor under one SOW will not be considered a breach under any other SOW. The services intended hereunder are related to the State's implementation and/or use of one or more Software Deliverables licensed hereunder or in a separate software license agreement between the parties ("License Agreement").
- 9) Payment Terms: The total License Fee and the Support Service or Maintenance Fee (provided the State subscribes or purchases such services) for the first year shall be invoiced upon delivery of the Software. The Support Service or Maintenance Fee for subsequent contract years, if any, will be invoiced annually 60 days prior to the anniversary date beginning each subsequent year. Increases in Vendor's Contract price for Support Services or Maintenance shall not exceed five percent (5%) per year following the first Contract year. Payment terms for software are Net 30 days after receipt of correct invoice or acceptance of software; whichever is later. Payment terms for services are due and payable the month following the month for which charges accrue, or in

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accordance with the contract payment schedule. The using agency is responsible for all payments under the contract.

- 10) Acceptance: Acceptance testing is required for all Vendor supplied software unless provided otherwise in the solicitation documents or a Statement of Work. The State may define such processes and procedures as may be necessary or proper, in its opinion and discretion, to ensure compliance with the State's specifications and Vendor's technical representations. Acceptance of software or services may be controlled by amendment hereto, or additional terms as agreed by the parties. In the event acceptance of software or services is not described in additional contract documents, the State shall have the obligation to notify Vendor, in writing and within a reasonable time following installation of any software deliverable described in the contract if it is not acceptable. The notice shall specify in reasonable detail the reason(s) a deliverable is unacceptable. Acceptance by the State shall not be unreasonably withheld; but may be conditioned or delayed as required for installation and/or testing of software.
- **Warranty Terms:** Notwithstanding anything in this Contract or Exhibit hereto to the contrary, Vendor shall assign warranties for any Deliverable supplied by a third party to the State.
 - a. Vendor warrants that any Software or Deliverable will operate substantially in conformity with prevailing specifications as defined by the current standard documentation (except for minor defects or errors which are not material to the State) for a period of 90 days from the date of acceptance ("Warranty Period"), unless otherwise specified in the Solicitation Documents. If the Software does not perform in accordance with such specifications during the Warranty Period, Vendor will use reasonable efforts to correct any deficiencies in the Software so that it will perform in accordance with or substantially in accordance with such specifications.
 - b. Vendor warrants to the best of its knowledge that:
 - i. The licensed Software and associated materials do not infringe any intellectual property rights of any third party;
 - ii. There are no actual or threatened actions arising from, or alleged under, any intellectual property rights of any third party;
 - iii. The licensed Software and associated materials do not contain any surreptitious programming codes, viruses, Trojan Horses, "back doors" or other means to facilitate or allow unauthorized access to the State's information systems.
 - iv. The licensed Software and associated materials do not contain any timer, counter, lock or similar device (other than security features specifically approved by Customer in the Specifications) that inhibits or in any way limits the Software's ability to operate.
 - c. UNLESS MODIFIED BY AMENDMENT OR THE SOLICITATION DOCUMENTS, THE WARRANTIES IN THIS PARAGRAPH ARE IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, OR WHETHER ARISING BY COURSE OF DEALING OR PERFORMANCE, CUSTOM, USAGE IN THE TRADE OR PROFESSION OR OTHERWISE, INCLUDING, BUT NOT LIMITED TO, IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, AND NO OTHER REPRESENTATIONS OR WARRANTIES HAVE FORMED THE BASIS OF THE BARGAIN HEREUNDER.
- Applies if marked: Escrow of Code: Vendor has established an Escrow Agreement ("Escrow Agreement") with a third party escrow agent acceptable to the State, as required in the solicitation documents. Within thirty days from the Effective Date of the Agreement, Vendor will add the State as a beneficiary to such Escrow Agreement. In the event (i) this Agreement is terminated due to insolvency or the filing of involuntary bankruptcy proceedings pursuant to Chapter 7 of the U.S. Bankruptcy Code and (ii) Vendor no longer offers support or maintenance services for the Software (both (i) and (ii) constituting the release condition ("Release Condition") under the Escrow Agreement), the Software code deposited in accordance with the Escrow Agreement (the "Deposit Materials") shall be delivered to the State and the State shall be granted a license to use the Deposit Materials solely to repair, maintain and support the Software licensed to State pursuant to this Agreement. The license to the Deposit Materials under this Section shall terminate upon the termination or cure of the Release Condition.

- 13) Confidentiality: Vendor shall employ security measures and standards, including encryption technologies, as may be necessary or proper, and as mutually agreed by the State and Vendor during performance of this Agreement. Vendor and its agents, if any, shall not have access to any information except as required to perform Vendor's obligations under this Contract.
- 14) State Property and Intangibles Rights: The parties acknowledge and agree that the State shall own all right, title and interest in and to the copyright in any and all software, technical information, specifications, drawings, records, documentation, data and other work products first originated and prepared by the Vendor for delivery to the State (the "Deliverables"). To the extent that any Vendor Technology is contained in any of the Deliverables, the Vendor hereby grants the State a royalty-free, fully paid, worldwide, perpetual, non-exclusive license to use such Vendor Technology in connection with the Deliverables for the State's internal business purposes. Vendor shall not acquire any right, title and interest in and to the copyrights for goods, any and all software, technical information, specifications, drawings, records, documentation, data or derivative works thereof, or other work products provided by the State to Vendor. The State hereby grants Vendor a royalty-free, fully paid, worldwide, perpetual, non-exclusive license to non-confidential Deliverables first originated and prepared by the Vendor for delivery to the State.
- 15) License Rights: All licenses granted to either party include the right to make, have made, use, have used, import, offer to sell, sell, lease or otherwise transfer any apparatus, or practice and have practiced any method and shall include the right to grant, directly or indirectly, revocable or irrevocable sublicenses to affiliates of such party; and nothing contained in this contract shall be deemed to grant any license under any other patents or patent applications arising out of any other inventions of either party.
- **Default:** If the prescribed acceptance testing stated in the Solicitation Documents or performed pursuant to Paragraph 13 of the General Terms and Conditions for Goods and Related Services is not completed successfully, the State may request substitute Software, cancel the portion of the Contract that relates to the unaccepted Software, or continue the acceptance testing with or without the assistance of Vendor. These options shall remain in effect until such time as the testing is successful or the expiration of any time specified for completion of the testing. If the testing is not completed after exercise of any of the State's options, the State may cancel any portion of the contract related to the failed Software and take action to procure substitute software. If the failed software (or the substituted software) is an integral and critical part of the proper completion of the work for which the Deliverables identified in the solicitation documents or statement of work were acquired, the State may terminate the entire contract pursuant to the Default terms in the General Terms and Conditions.

17) Limitation of Liability for Software Deliverables:

- a. Where equipment is under the State's exclusive management and control, Vendor shall not be liable for any damages caused by the State's failure to fulfill any State responsibilities including, without limitation, those relating to assuring the proper use, management and supervision of the equipment and programs, audit controls, operating methods, office procedures or for establishing all property checkpoints necessary for the State's intended use of the machines.
- b. The Vendor's liability for damages to the State for any cause whatsoever, and regardless of the form of action, whether in contract or in tort, shall not exceed two times the value of the contract, but in no event shall the liability for damages be less than the total value of the contract.
- c. WITH THE EXCEPTIONS OF INTELLECTUAL PROPERTY RIGHTS INFRINGEMENT ACTIONS, THE STATE'S CONSTITUTIONAL RIGHTS AS A SOVERIGN, AND PENALTIES IMPOSED UPON THE STATE BY ANY FEDERAL ENTITY OR EXPENDITURES OF PUBLIC FUNDS REQUIRED OR RESULTING FROM AN OPERATIONAL FAILURE OF THE DELIVERABLE(S) OR SERVICES PROVIDED HEREUNDER, BUT NOTWITHSTANDING ANY OTHER TERM TO THE CONTRARY CONTAINED IN THIS CONTRACT, NEITHER PARTY NOR THEIR RESPECTIVE AFFILIATES SHALL, UNDER ANY CIRCUMSTANCES, BE LIABLE TO THE OTHER PARTY OR ITS AFFILIATES (I) FOR ANY CLAIM BASED UPON ANY THIRD PARTY CLAIM, (II) FOR ANY CONSEQUENTIAL, INCIDENTAL OR INDIRECT DAMAGES OF ANY NATURE WHATSOEVER, INCLUDING, WITHOUT LIMITATION, LOST PROFITS, LOST SAVINGS OR OTHER ECONOMIC CONSEQUENTIAL DAMAGES, WHETHER RESULTING

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FROM DELAYS, LOSS OF DATA, INTERRUPTION OF SERVICE OR OTHERWISE, EVEN IF A PARTY OR ITS AFFILIATES HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, OR (III) FOR ANY PUNITIVE OR EXEMPLARY DAMAGES OF ANY NATURE WHATSOEVER.

- **Vendor Obligations:** In the event the State does not perform the State Obligations in a timely manner; Vendor may revise the applicable SOW and/or amount it is charging for Services, and present it as a Change pursuant to Paragraph 31 of the General Terms and Conditions for Goods and Related Services, or terminate this Agreement, at Vendor 's option. For each SOW, Vendor will designate one (1) Vendor point of contact that shall be responsible for responding to the State's questions and issues relating to the Services. The State understands and agrees that Vendor may subcontract with third parties to perform all or part of the Services in conformance with Paragraph 4 of the General Terms and Conditions for Goods and Related Services.
- **Qualified Personnel:** Each party shall provide sufficient, qualified, knowledgeable personnel capable of: (i) performing obligations set forth in this Agreement and each SOW; (ii) making timely decisions necessary to move the Services forward; (iii) participating in the project and assisting Vendor in rendering the Services; and (iv) facilitating development, testing and implementation of Vendor software, if applicable. Vendor warrants that qualified personnel will perform the services in a professional manner. As used in this Paragraph, "professional manner" means that the personnel performing the services will be of a skill and competence consistent with prevailing norms of company providers in the information technology industry.
- 20) Vendor shall not be responsible for any alleged breach of the foregoing Paragraph 16) that is attributable to (i) misuse or modification of Vendor's Software by or on behalf of the State, (ii) the State's failure to use corrections or enhancements made available by Vendor, (iii) the quality or integrity of data from other automated or manual systems with which the Vendor's Software interfaces, (iv) errors in or changes to third party software or hardware implemented by the State or a third party (including the vendors of such software or hardware) that is not a subcontractor of Vendor or that is not supported by the Deliverables, or (vi) the operation or use of the Vendor's Software not in accordance with the operating procedures developed for the Vendor's Software or otherwise in a manner not contemplated by this Agreement.
- **Transportation:** Transportation of software shall be FOB Destination unless delivered by the Internet or file transfer as agreed by the State, or otherwise specified in the solicitation document or purchase order.